(20,035.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 523.

GEORGE W. FELTS, APPELLANT,

vs.

E. J. MURPHY, WARDEN OF THE ILLINOIS STATE PENITENTIARY AT JOLIET.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 3, 1906.

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In the Circuit Court of the Unied States for the Northern District of Illinois, Eastern Division.

27976.

PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* GEORGE W. FELTS
vs.
E. J. MURPHY, Warden of the Illionis State Penitentiary at Joliet.

Mr. William E. Mason, Attorney for George W. Felts.
Mr. George B. Gillespie, Mr. Harry B. North, Attorneys for E. J. Murphy, Warden of the State Penitentiary at Joliet.

Pleas in the Circuit Court of the United States for the Northern District of Illinois—Eastern Division begun and held at the United States Court room, in the City of Chicago, in said District and Division, before the Hon. Kenesaw M. Landis, District Judge of the United States for the Northern District of Illinois, on Saturday, the twenty-fifth day of November, being one of the days of the regular July term of said Court in the year of our Lord one thousand nine hundred and five, and of our independence the one hundred and thirtieth year.

MARSHALL E. SAMPSELL, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *Eastern Division, ss:*

27976.

PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* GEORGE W. FELTS
vs.
E. J. MURPHY, Warden of the Illionis State Penitentiary at Joliet.

Be it remembered that on this day to-wit: the thirteenth day of November, 1905, there was filed in the Clerk's office of said Court in the above entitled cause a certain Petition for Writ of *Habeas Corpus* in the words and figures following to-wit:

(*a*)

IN THE

Supreme Court of the United States

PEOPLE OF THE STATE OF ILLINOIS EX REL.
GEORGE W. FELTS,

vs.

E. J. MURPHY, WARDEN OF THE STATE PENITENTIARY AT JOLIET, ILLINOIS.

Petition for Writ of Habeas Corpus.

Your petitioner, George W. Felts, respectfully represents that he is detained unlawfully and imprisoned in the penitentiary of the State of Illinois at Joliet by E. J. Murphy, warden of said penitentiary, on a charge of murder by virtue of a certain warrant for his commitment, a copy whereof is hereto annexed, which detention and imprisonment is unjust and contrary to law, and your petitioner alleges that he is not guilty of the crime laid to his charge.

Your petitioner, George W. Felts, further shows that he, the said George W. Felts, was in the January term, 1905, of the Winnebago County Circuit Court, placed on trial under an indictment for murder, was convicted and sentenced to the penitentiary for life, without having any chance to defend himself, and to prove, which he could have done, that he was the victim of a hold-up, near midnight of a dark night, when there was no moon, and no lights in the streets and no lights in the windows where he was passing.

Your petitioner, the said George W. Felts, now between sixty and seventy years of age, has always been a law-abiding, peaceable citizen, and never had any trouble with the man who was cut that night, nor did he know who it was that came upon him and grasped him by the neck and almost broke it as he run him about in the dark. When he found that he could not get loose because of the strength of the man, who was very strong and hurting him cruelly, and feeling another man come up to his back, and believing it to be a serious hold-up, he tried to prick the man with his small pocket knife in the leg to make him let go, but just as he reached back, this man came under him with his knee from the back, and kicked him from him. He, the said George W. Felts, declares under oath that if it was his knife that wounded the man it was done in that way, at that time, and that neither then, nor at any other time, did he intend to seriously harm his assailant, but only to warn him to make him let go, and that he did not know at the time that his knife touched the man, and since reading Dr. Haines' description of the wound, as to the size and depth, he honestly believes that the blade of his small pocket knife could not have made the wound, and that some one else did the deed, possibly to help him, as there were at least two other men in the affair who would be as likely to aid him as to help his assailant, as they knew he was deaf and a sufferer from rheumatism, besides being an old man not half as strong as the man who had him by the neck.

Your petitioner respectfully presents the above statement to show that if he could have known what was being said in the trial, he could have brought proof corroborating his statement by people who saw the marks and bruises made on his neck by the fingers of his assailant, one of whom would have testified that his neck was lame and swollen for more than a week afterwards.

Your petitioner, George W. Felts, further represents that he found out too late to be of service that this evidence as

to the swollen and bruised condition of his neck was not presented in the trial.

Your petitioner respectfully shows further that he stated under oath on the witness stand that he had not heard a word, and could not hear a word of all that had been said during his trial, and that nothing was done by the court, before or after that time, to provide means for him to know what was said or done, but he was passed through the whole trial as though he had no rights, and that he might as well have been outside of the courthouse, so far as knowing any of the details of the trial was concerned.

Your petitioner, George W. Felts, further shows that while he knew that he was treated with monstrous injustice during the trial, he did not know till afterwards that his legal and constituional rights were being denied to him, and that he had a right, established by the Constitution of the United States of America, and confirmed by decisions from the highest court of the United States, under the common law, to know all the proceedings of the court, while the trial was in progress, and to have the testimony of witnesses, and all the details of the trial written out for him, or printed for his use, that he might understand and be able to properly defend himself personally, and by his attorney. It seemed at the time a terrible thing to him, that having lost his hearing in the service of his country, that that country had made no provision to secure to him, a deaf man, his rights in its courts. He now knows that his constitutional and legal rights were withheld, in that he did not have communicated to him by writing or printing, or by the use of his ear tube, the proceedings of the court that tried him.

Your petitioner represents that he did not waive his constitutional right to know the evidence against him, and he is advised that he could not waive such right.

Your petitioner, George W. Felts, further represents that he is a veteran of the civil war, who lost his hearing in line

of duty as a soldier, and because of this deafness this trouble came upon him. The village marshal testified in a written statement, verified in the trial court, that he heard laughing and talking during the time of the assault, and had he, your petitioner, heard this laughter and talking, he would have known the voice of his assailant, and would have known that the seeming hold-up was meant to be the rough fun of a man who had been drinking. He, your petitioner, being so deaf that he can only hear when a person speaks into the mouth-piece of the ear trumpet close to him, heard no sound of laughter, and not a word spoken, and the rough treatment made him believe that he was in serious danger from the three men, especially the one who had him grasped by the neck, which was a reasonable belief, as in the midnight darkness, he did not know who any of them were.

He, your petitioner, George W. Felts, further represents that while he can not always hear through the ear tube, he can read both writing and printing, and it was possible, therefore, to interpret to him all the details of the trial in that way, and he, your petitioner, George W. Felts, further represents under oath that no one was appointed by the court to convey to him any of the proceedings, nor did any one volunteer to do this, while it was known to all, as the affidavits attached to this petition witness, that he could not and did not hear or know any of the proceedings of the trial.

Your petitioner further represents unto your Honors that although he had with him an ear trumpet during the progress of his trial, yet he states under oath, as a matter of fact, that he did not hear one single word of the examination of the jurors either by the state's attorney or by his own counsel; that he did not hear the names of the jurors nor their business so that he could advise intelligently with his counsel as to the advisability of the acceptance or rejection of the jurors, and as a matter of fact, he was not consulted and did not know the facts elicited by the examination of the

jurors before acceptance, and he states to your Honors that from facts he has gathered by reading the newspapers since his trial that he would have objected to certain jurors if he had known their names and their relationship with other people, and would have helped his attorney, during examination, touching their qualifications as jurors; that, as a matter of fact, such examination was never written out so far as this petitioner is informed, and believes, and no word of the examination was spoken to him through his speaking tube or communicated to him in any way before the acceptance of the jury.

Your petitioner further represents that he did not hear, nor have communicated to him in any way, the evidences of the witnesses on the trial of his case, and that he was unable to suggest to his counsel any questions for cross-examination during the trial, and that the substance of their evidence was not communicated to him, until he saw some partial reports of it in the newspapers, when it was too late to suggest to his counsel proper cross-questions, and your petitioner further states that the first thing communicated to him after the beginning of the trial, which lasted about two weeks, was the verdict; that he was in the court room with his ear trumpet but was unable to hear the verdict, and did not know what the verdict was until the clerk of the court wrote it upon a piece of paper and gave it to your petitioner.

Your petitioner further represents that he was present in the court during the motion for a new trial, but did not hear a word that was said by either counsel, and the only thing communicated to him was when he was called to the bar to be sentenced, and then your petitioner noticed that the court was talking to the sheriff, and the sheriff came then to your petitioner and putting his mouth in close communication with your petitioner's ear trumpet, explained to your petitioner that his motion for new trial had been overruled,

and that he had been sentenced for life, as shown by copy of court proceedings hereto attached.

Your petitioner further represents that he did not waive his right to a speedy trial, but was anxious to be tried while the condition of his neck would prove that he had been assaulted, but for the convenience of others his trial was postponed, at which time he supposed that witnesses would testify to the marks and bruises upon his neck, showing that, what he had done, if he had done anything, that he had only acted in self-defense without any idea of seriously harming any one. To his prejudice, loss and personal injury, he was held in jail for six months with no opportunity to let the people know his side of the case, and as before stated, being unable to hear anything that passed during the trial, did not know until it was too late, that the important evidence concerning the marks and bruises on his neck, corroborating his statement concerning the affair, had not been presented.

Your petitioner further represents that he never had a copy of the indictment, nor the names of the witnesses, nor anything that would enable him to aid his attorneys in his defense, nor had he any opportunity from the hour he was arrested to the rendering of the verdict to hear or to know the proceedings during his trial.

Your petitioner believes that he would have been acquitted, had he been able to know, that he might properly aid in his defense, in the examination and cross-examination of the witnesses, and he further represents that he never willingly waived any right to a legal and constitutional trial, and that he is advised that he could not have waived such right had he wished to do so.

Your petitioner further represents to your Honors that it is his belief that had he been permitted to be present at the coroner's inquest and shown the marks upon his neck of the finger prints and bruises made by his assailant, that he would never have been indicted, and that every one

would have believed his story, that he was the victim of an assault, and had only acted in self-defense, without any intention of seriously harming any one.

Your petitioner further represents that the bruises and finger prints were still to be seen upon his neck, and it was still lame and swollen at the preliminary trial, and your petitioner did not waive his right to be examined on that occasion nor authorize his attorney to waive any of his rights then or at any time thereafter, but being unacquainted with the rules in trying cases, and not being able to hear any of the proceedings, left the whole matter in his counsel's hands, who of his own motion decided not to offer any defense in the preliminary trial.

Your petitioner also represents that at the preliminary trial, though he was within about ten (10) feet of the witnesses, that he could not hear a word, and that no word of all that was said was communicated to him during said trial.

Now, therefore, your petitioner, the said George W. Felts, represents that he was not tried by due process of law and that his rights, under the Constitution of the United States of America and the Constitution of the State of Illinois, to have a trial by due process of law and to be confronted with the witnesses brought in to testify against him, by the people, was absolutely denied him, the said George W. Felts, and that by reason of his condition in life, suffering the infirmity of deafness, his trial was without any authority of law and that the judgment of the court is absolutely null and void, for the reason that when the court failed to have written for him to read the evidence of the witnesses and failed to have communicated to him the proceedings, while the trial was in progress by writing or printing or in any way informing him of the details of the trial, and failed to have communicated to him the answers of the jurors and other proceedings when they were being examined and selected to try him, denying to him the right

to challenge and to aid in selecting said jurymen and leaving him in total ignorance of all that was said or done; that the court, therefore, and thereby, lost jurisdiction of the person of your petitioner, the said George W. Felts.

Your petitioner, George W. Felts, annexes hereto a certified copy of the proceedings of said trial just preceding the passing of sentence wherein it is shown that the trial judge knew that the said George W. Felts did not hear and could not hear any of the proceedings, and that the said trial judge sentenced the said George W. Felts without having given him a trial by due process of law as guaranteed to him by the Constitution of the United States of America.

Your petitioner also annexes hereto extracts from affidavits, showing his utter inability to hear the proceedings wherein he was convicted and sentenced.

Your petitioner further represents that he is entirely without means and unable to pay the necessary costs to appeal his case, and have written up the evidence, bill of exceptions, etc., from the Circuit Court of Winnebago county, Illinois; that his sole and only income consists of a pension of twenty-four dollars ($24) per month given him by the government of the United States for deafness, and that if his whole pension was applied to the payment of the transcript of record it would take years to pay for the record alone. The transcript with evidence alone, costing above the sum of seven hundred dollars ($700), and your petitioner represents that it would take his pension beyond the probabilities of his life to properly sue out a writ of error and present the matter to the Supreme Court of the State of Illinois.

Your petitioner further represents that he presented his petition, substantially as stated hereinbefore to the Circuit Court of the United States before his Honor, Judge SANBORN, who declined to consider the petition until after it had been presented to the state courts; that thereupon, your petitioner presented his petition to his Honor, Judge

HONORE, one of the judges of the Superior Court of Cook county, who held in substance that the indictment was still pending against your petitioner,, and that it had not merged into the judgment of the court, a copy of the opinion of the said Judge HONORE is hereto attached.

Your petitioner further represents that he thereafter presented or attempted to file his petition for the writ of *habeas corpus* in the Supreme Court of the State of Ilinois, but that the said court refused to permit your petitioner to file his petition for such a writ and the following proceedings were had in the Supreme Court of the State of Illinois:

Your petitioner's counsel was informed by the clerk and by one of the associate justices of the Supreme Court of the State of Illinois that under the practice of said court, the proper proceedings were to leave the petition with the clerk and file a written motion for leave to file the petition for a writ of habeas corpus.

Your petitioner states that his counsel and the attorney-general filed with the clerk also a stipulation that waived the necessity of having the relator there in person, and consenting to an early hearing as might be found to suit the convenience of the court, and on the first day of the term of said court, said written motion and stipulation were filed. The following day the following order was entered:

PEOPLE OF THE STATE OF ILLINOIS *ex rel* FELTS *against* MURPHY, warden, motion for leave to file petition for *habeas corpus* refused. A copy of the remarks of the associate justice, which was delivered upon the same day the motion for leave to file was refused, is hereto attached, and your petitioner further represents that the statement of the Supreme Court is based upon an entire misconstruction of the law and the facts.

Your petition further represents that neither he nor his counsel were permitted to address the Supreme Court upon the question of law nor were they permitted, under the rules

of the court, to file any brief which would call attention to the specific facts relied upon and also to the specific authorities relied upon, and that the said Supreme Court had nothing before them but the formal petition for a writ of *habeas corpus* and rendered the opinion he did without any hearing on behalf of this petitioner, or his counsel, thereby practically denying, and so far as this petitioner is concerned, suspending the writ of *habeas corpus*.

The said statement by the Supreme Court says that this petitioner's sense of hearing was so defective "that he was not able to hear without an ear trumpet," whereas the facts of the case are that he did have an ear trumpet with him during the whole trial, but was not able to hear anything that transpired in the court room except the statement that his motion for a new trial had been overruled, and the sentence, and that then the court called him before the bar of the court, and repeated that his motion for a new trial was overruled and his sentence to the sheriff, who thereupon applied his mouth to the ear trumpet and in that way communicated to the defendant the statement that his motion for a new trial had been overruled, and whether he had anything to say, and the sentence. And your petitioner represents that if that process had been applied during the hearing of the case, he would have been able to have produced evidence on his own behalf which was necessary for his defense, and he would have been able to have communicated with his attorney and suggested to him proper questions for the examination of his own witnesses and the cross-examination of the state's witnesses.

And your petitioner further shows that he, the said George W. Felts, is not committed or detained by virtue of any process, judgment, decree or execution issued by any court or judge of the United States in a case where such court or judge had exclusive jurisdiction, nor by virtue of a final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon

such judgment or decree, nor for any treason, felony, or other crime committed in any other state or territory of the United States for which he, the said George W. Felts, ought, by the Constitution and laws of the United States, to be delivered up to the executive power of such state or territory.

To be relieved from which said detention and imprisonment, your petitioner, George W. Felts, now applies, praying that a writ of *habeas corpus*, to be directed to the said E. J. Murphy, warden, may issue in this behalf, pursuant to the statute in such case made and provided, so that the said George W. Felts may be forthwith brought before this Honorable court to do, submit to and receive what the law may require.

GEORGE W. FELTS.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK, }

George W. Felts, the petitioner above named, being first duly sworn, on oath says: That he has heard the foregoing petition by him subscribed and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters and things therein stated to be upon information and belief, and as to those matters he believes them to be true.

GEORGE W. FELTS.

Subscribed and sworn to before me this 13th day of October, A. D. 1905.

[SEAL.]

ALICE H. TINDALL,
Notary Public.

~~ATTACH TO EXHIBITS TO PETITION.~~

The court:

"EXHIBIT 1."

~~Statement of the court in the trial of the case in the Circuit Court of Winnebago county, State of Illinois.~~

On reviewing this entire case I am disposed to say that the motion for a new trial be overruled.

It is regretted in one sense that the defendant on account of his infirmity is unable to know clearly what has been done. He should be informed, I suppose, of the fact that his motion for a new trial has been overruled. Mr. Sheriff, will you bring Mr. Felts forward? I wish you would say to Mr. Felts that his motion for a new trial has been overruled.

The Sheriff: The court wishes me to tell you that motion for a new trial is overruled. Do you understand?

Felts: I understand; yes.

The Court: You may ask him if he has anything to say why sentence of the court should not now be pronounced.

The Sheriff: Have you anything to say why sentence of the court should not now be pronounced?

Felts: False swearing is all I got to say.

The Court: Well, under the circumstances of course it is practically impossible for me to say anything to this defendant.

(Here follows the sentence of the court), which sentence was transmitted to the defendant by the sheriff through a tube.

I, Thomas J. Scone, do hereby certify that as the official reporter I took the testimony in the case of the *People* vs. *Felts*, tried before his Honor, A. H. FROST, Judge of the Seventeenth Judicial Circuit, and that the foregoing is a transcript of a part of said proceedings, so taken by me.

(Signed) THOS. J. SCONE.

~~"EXHIBIT 2."~~

STATE OF ILLINOIS, }
WINNEBAGO COUNTY, } ss.

Thomas J. Scone, being first duly sworn, on oath, deposes and says that he was present during the trial of the case of the *People of the State of Illinois* vs. *George W.*

Felts, and that at no time during said trial was the testimony of any witness read to the said George W. Felts, nor was the testimony of the witnesses who testified in said case written up by me as the official stenographer or reporter of said court and read over to the said George W. Felts at any time prior to the passing of sentence by the court.

The testimony of all the witnesses was taken down by me as the official stenographer of said court.

(Signed) THOS. J. SCONE.

Subscribed and sworn to before me this eighth day of March, 1905.

(Signed) WILLIAM G. ANDERSON,
Notary Public in and for Cook County, Illinois.

~~"EXHIBIT 3."~~

Affidavits of Matilda Fletcher Wiseman and many others who sat near the defendant during his trial, showing among other things that no part of the proceedings of his trial was communicaed to the said George W. Felts, during his said trial until the verdict which the defendant could not hear (being written out for him by the clerk of the court), and the action of the judge in overruling the motion for a new trial, and the sentence, both of which was communicated to the defendant by the sheriff through an ear trumpet.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

I, Matilda Fletcher Wiseman, first being duly sworn, on oath testify, that I was present during the whole time of the trial of George W. Felts, held at the courthouse, in the City of Rockford, in the County of Winnebago, State of Illinois, in the January term of the District Court, A. D. 1905.

I testify that I am the sister of the said George W. Felts and I know him to be a deaf man, who lost his hearing in the service of his country, from being out in a cold rain while on duty, when he was coming down with the

measles; and that he was also broken in health for a long time on account of such exposure, and the long hard campaign preceding it, is well known to his old comrades, and to all who are intimately acquainted with him, also, that previous to that time, one of his ears was permanently injured at the Battle of Perryville.

I testify that he never fully recovered his hearing and that for a long time he has been compelled to use an ear trumpet to hear anything, and that he can not hear by means of the ear tube or trumpet unless the person speaking is close to him and speaking into the mouth-piece of the ear tube, the same as in using the telephone and that even in the use of the ear tube, his answers show sometimes that he has not understood what was said to him.

I testify that I was present when the jury was chosen to try the said George W. Felts, and no attention was given to him, either by consulting him through his ear tube or in any other way. None of the questions to the jurymen, nor the answers of any one of them were communicated to him through the tube or by writing or printing. The judge and the attorneys seem to have agreed, that he being a deaf man need not consider any steps of the proceedings, although he was charged with a felony and his life was at stake his constitutional rights to know the proceedings and to challenge the jury were withheld.

I testify further that when the witnesses were on the stand not one word of what they were saying was communicated to him,either by speaking to him by the tube or writing or printing anything for him to read, and to this day he is ignorant of the evidence as to many particulars, although he gleaned enough from the newspapers to know that there was false swearing against him, that he could have shown to be such had he had an opportunity to know what the witnesses were saying at the time they were testifying.

I testify further that, the said George W. Felts in not being able to hear and not having spoken to him through the tube, or written or printed for him to read the proceedings as the trial was in progress, suffered great disadvantage throughout the whole trial, and particularly, that he could not know what the state's attorney said when he went outside of the evidence, and introduced

damaging statements, wholly untrue, that had never appeared in the evidence at any time, and when the said state's attorney contradicted the testimony of the state's witnesses, where their evidence favored the accused, and uttered false accusations and insinuations in a loud voice with great energy, and belittled the honorable and faithful soldier record of George W. Felts, ridiculing him because he had been less than a year in the service, a service in which he almost lost his life and did lose his hearing; all this terrible tirade of falsehood and abuse was uttered in a loud voice, but the accused, the said George W. Felts, was so deaf that he could not hear one word of it, and not one word was repeated to him either through his tube or by writing or printing, and the consequence was that he sat there before the jury with a calm expression upon his face as though the matter was of small interest to him, causing the jury and others to believe that he was hard hearted and indifferent, and as the papers reported, seemed the least concerned of any one; thus did his sad infirmity enable the state's attorney to take advantage of him, and I believe,as he does, and as his own attorney, R. K. Welsh, declared, that these falsehoods in the state's attorney's closing speech, being the last impression made upon the jury, influenced them, and determined the verdict. In a word it was the unwarranted and false attack of the state's attorney in his closing speech that brought from the jury the terrible penalty of imprisonment for life upon a deaf old man, who, had he been able to hear, could have proven that, in so far as he was responsible for the crime charged upon him, he had acted solely in self-defense, against a man nearly twice his strength and weight, who was twenty years younger than he, and that in so acting he had not intended to seriously injure any one.

I testify further that I would have been glad to witness to the condition of the neck of George W. Felts which was swollen and lame showing that he had been violently assaulted as he declared, and I believe that his assailant nearly dislocated his neck in the attack. It was about a week after the arrest that I first knew the extent of the injury he had received and I then got a large pillow for him to prop his head so he could get in a comfortable position to sleep.

His attorney was employed by me, because he told me that the defendant George W. Felts had a good defense, in that his neck showed that he had been the victim of an assault. That there were marks and bruises on the neck of the defendant when he first examined him several days after his arrest. He permitted the evidence to close in the trial court without bringing in any testimony as to the condition of the defendant's neck, to my great surprise, and when I spoke to him about it his reply was, that he, being the attorney for the defendant, could not testify as it was against the rule for an attorney to testify for his client. He believed then that he should win the case, as he thought, as I did, that the people ~~jury~~ believed the defendant's straightforward testimony on the witness stand, but he had not counted on the tide of abuse and falsehood that was uttered by the state's attorney in his closing speech.

I have asked the attorney for the defendant, R. K. Welsh, for an affidavit covering the points mentioned. He still insists that it would not be professional, though in his letter he says: It is true that the bruises were upon the neck several days after the arrest, and that he would consider the question of making the affidavit when he knew what use I would make of it. Since that time I went to see him and while he still admitted the marred condition of the neck, he also held to the rule, that it was not proper for an attorney to testify for his client.

I testify that the said George W. Felts being so deaf, that he did not know what was going on in the trial and no one being appointed by the court to inform him of the proceedings, did not know until it was too late to be of service, that no one had testified to the condition of the neck of the said George W. Felts, and that this important evidence, that he had been attacked and had only acted in self-defense, so far as he had done anything had been omitted.

I testify that I was present when the attorney for the defense, R. K. Welsh, was trying to secure a new trial, and that the said George W. Felts expected that the attorney would secure the new trial on this important evidence that had been neglected, as to the condition of his neck, but said attorney for the defense told me that this evidence could not be used, because we knew it at the time that the trial

was in progress, and the said George W. Felts, not being able to hear, did not know that this plea was not used by his attorney.

I testify that no one was appointed to communicate in any way any of the proceedings of the trial to the defendant nor until after the judge had overruled the motion for a new trial. Then the judge said, "I suppose he should be informed that the motion for a new trial is overruled." He then appointed the sheriff to take the ear tube that the said George W. Felts wore around his neck for that purpose during the whole trial, and to communicate to the defendant the fact that he, the judge, had overruled the motion for a new trial. This was done and the judge then said, "It is practically impossible for me to say anything to the defendant." The judge also remarked, "It is to be regretted that the defendant on account of his infirmity has not known clearly what has passed during his trial." The judge then asked the sheriff to bring the defendant forward and take the ear tube and ask him whether he had anything to say why sentence should not be passed upon him. The sheriff took the ear tube and communicated this question to him. To this the defendant replied: "False swearing is all I have to say." After this, the judge asked the sheriff to convey to the defendant through the ear tube the sentence. The sheriff then took the ear tube again and conveyed through it the sentence to the said George W. Felts. Not only the sentence, but every word spoken to the defendant by the sheriff was spoken into the mouthpiece of the ear tube.

I testify that in conversation immediately afterward with the defendant, I found out that he had not understood all that the sheriff had said to him, and still believed that he would have a new trial, and could not seem to believe that the whole matter was finished without ever giving him a chance to bring in the most important evidence, proving that he had only acted in self-defense.

I testify further that I personally know, that the defendant, the said George W. Felts, did not waive his right to a speedy trial when first arrested, but was anxious to have his trial while the condition of his neck would prove that he had been assaulted, but for the convenience of others his trial was postponed, and he was held in jail

for six months to his great disadvantage and injury with no opportunity to let the people know the truth in the matter, as he was cautioned by his attorney not even to talk of his case, and in consequence of his deafness when the trial did come on, he was tried as an insensate block of wood, not having communicated anything to him in any way and deprived of every right guaranteed to him by the constitution of the United States.

MATILDA FLETCHER WISEMAN.

Subscribed and sworn to before me this 23d day of October, 1905.

[SEAL.] THOMAS H. ROBINSON,
Notary Public.

STATE OF ILLINOIS, }
COUNTY OF WINNEBAGO. } ss.

I, Florence F. Sarver, of the County of Winnebago and the State of Illinois, first being duly sworn, on oath testify: That I was present during the trial of George W. Felts, held at the courthouse, in the City of Rockford, in the Circuit Court in the January term, A. D. 1905. I sat near the accused, throughout the trial, and I testify that no one was appointed to communicate to him in any way the proceedings of the court, during the trial. Also that no one volunteered to repeat to him through his ear tube or to write or print for him to read, anything that was said by jury or judge or lawyer or any witness, and it was generally known and admitted that he, being deaf, was compelled to be tried without knowing what was said against him, or any of the proceedings during the progress of the trial.

I also testify that he can read writing and printing, and that he can hear imperfectly, through an ear tube, when the person speaking is close to him, speaking into the mouthpiece of the tube. This, however, was neglected, as his attorney was otherwise occupied, and no one was appointed to do it.

I also testify that the attorney for the defense, R. K. Welsh, told me that he saw marks upon the neck of George W. Felts. He said: "Mrs. Wiseman wants me to sign an affidavit about those marks that were on George's neck. I would not do it until I knew what she wanted of it,

not for one hundred dollars ($100) would I sign one to be used in the United States Court." Then he added: "The marks were there all right."

FLORENCE F. SARVER.

Subscribed and sworn to before me this 21st day of October, 1905.

[SEAL.] JESSE F. HARRIS,
Notary Public.

STATE OF ILLINOIS, }
WINNEBAGO COUNTY. } ss.

I, Blanche Eaker, of the City of Rockford, County of Winnebago and State of Illinois, first being duly sworn, on oath testify: That Albert Larson, one of the jurors in the George W. Felts' case, tried in the Circuit Court in the courthouse in the said city, and county and state, in the January term, A. D. 1905, talked with me after the trial and among other things said that he and several others of the jury thought that George W. Felts had not intended serious harm, even if it was his knife that did the deed for which he was tried, and they thought he ought to be released and voted for acquittal at first, but later, becoming afraid that the others would get the majority and hang him, they compromised on imprisonment for life. Some of the jury were inclined to believe the state's attorney's assertion in his closing speech that "the attorney for the defense had made up the statement of the defendant."

MISS BLANCHE E. EAKER.

Subscribed and sworn to before me this 21st day of October, 1905.

[SEAL.] LEWIS F. LAKE,
Notary Public.

STATE OF ILLINOIS, }
WINNEBAGO COUNTY. } ss.

I, Oscar Franklin, of the City of Rockford, County of Winnebago, and State of Illinois, first being duly sworn, testify, that I was present during many of the sessions of the Circuit Court of the said county and state, held at the court house in the City of Rockford, in the January term, A. D., while the said George W. Felts was being tried.

I testify that I knew George W. Felts to be a deaf man, who can only hear imperfectly, through an ear tube, when the person speaking is close to him, speaking directly into the mouthpiece of the tube. I sat where I could see him at any time, and close to him part of the time and I testify that no one conveyed to him the testimony, nor any of the particulars of the trial in my presence.

I also testify, under oath, that I was with him in the war for the union in Co. H. of the 74th Regiment of Illinois Volunteers, and that I know that he was a faithful soldier through the hard campaign under Gen. Buell through Kentucky and Tennesee, in conflict with Bragg's forces, and the terrible exposure and long marches according to comrade Holland's History of the 74th Reg. disabled over 300 of the regiment before we reached Nashville. While in camp at Edgefield George W. Felts was detailed to work on the breast works at Nashville, and as there was a cold rain falling at the time, he took cold when he was coming down with the measles and was sent to the hospital with his cousin Amos Felts who was also sick with the measles and who died in a few days after reaching the hospital.

I testify that George W. Felts was a faithful soldier from the time he enlisted till he was taken to the hospital before the battle of Stone River. He was with his company at the battle of Perryville and wherever the company was ordered, and always ready for picket duty or anything required of him. It was not his fault that he was broken down in his youth, and robbed of his health before he had been out a year in the service. It is not his fault that he is a deaf man nor was it impossible to convey to him the details of his trial as he can read both writing and printing.

OSCAR FRANKLIN.

Subscribed and sworn to before me this 16th day of September, 1905.

[SEAL.]

LEWIS F. LAKE,
Clerk Circuit Court.

STATE OF ILLINOIS, } ss.
WINNEBAGO COUNTY, }

I, Edwin R. Rowley, of the City of Rockford, County of Winnebago, and State of Illinois, being first duly sworn, on oath says that he was present during the trial of George W. Felts, in the Circuit Court of said Winnebago county, held at the court house in the City of Rockford, Illinois, at the January term, A. D. 1905; that he was present during the greater part of said trial, being present all the time excepting about half an hour of one morning; that said George W. Felts was very hard of hearing, being unable to hear anything except when spoken to directly through an ear trumpet or tube placed close to the mouth of the one speaking; that said George W. Felts was unable to hear any of the testimony presented against him at said trial, nor the pleas made by the attorneys, nor any of the proceedings of said trial; that no provision was made to inform the said George W. Felts at the time testimony was presented and arguments made what was said or done during said trial; that no effort was made by any one to convey to the said George W. Felts any of the details of the said trial as it proceeded, by mechanical means, such as writing or printing or the use of an ear tube; that he, this affiant, heard the argument of the state's attorney before the jury at said trial, and he is satisfied that said state's attorney, Harry B. North, by going outside of the evidence at times, and contradicting the evidence at other times, in his statements before the jury, succeeded in misleading said jury, thereby putting the said George W. Felts in Joliet prison for life, thus unjustly taking advantage of a deaf and helpless old man.

EDWIN R. ROWLEY.

Subscribed and sworn to before me this 11th day of September, 1905.

[SEAL.] LEWIS F. LAKE,
Clerk Circuit Court.

STATE OF ILLINOIS, } ss.
WINNEBAGO COUNTY, }

I, George A. Preston, of Rockford, County of Winnebago, and State of Illinois, being first duly sworn, on oath testify that I was present a portion of two days at the trial of George W. Felts, in the January term of the Circuit

Court, A. D. 1905, in the court house in Rockford, in the said county and state.

I testify, under oath, that it was known to me and generally known, that the said George W. Felts is a deaf man, who can only hear when the speaker is close to him and speaking with the mouth at the end or in the mouthpiece of the tube. I testify that no one attempted to speak to him through the tube, or to convey to him in any other way such as by writing or printing, any word that was said in the trial court, while I was present, so that he might as well have been outside of the court house, so far as being able to know the proceedings was concerned.

I also testify that I was present a portion of the time when the jury was being chosen, and no attention was paid to him, and nothing conveyed to him in any way as to the questions propounded to the jury or the answers given by any one of them. I particularly noticed this neglect, and that he was ignored as completely in the selection of the jury and in all the other proceedings of the trial while I was present as any mere spectator in the court room.

GEORGE A. PRESTON.

Subscribed and sworn to before me this 14th September, 1905.

[SEAL.] LEWIS F. LAKE,
Clerk Circuit Court.

STATE OF ILLINOIS, }
WINNEBAGO COUNTY, } ss.

I, Blanche E. Eaker, of the City of Rockford, County of Winnebago, and State of Illinois, being first duly sworn, on oath testify that I was present during five sessions of the Circuit Court of said county and state, held at the court-house in the City of Rockford, Illinois, in the January term, A. D. 1905, while the trial of George W. Felts was in progress. I testify that I knew the prisoner, George W. Felts, to be a deaf man, who can only hear through an ear tube when the person speaking is close to him, speaking directly through the tube. I sat behind him, in the next row of seats, and I noticed particularly that no one attempted to convey to him any of the testimony, or any other proceeding of the trial, during the sessions of the court, when I was present, either by speaking to him through the tube or by

writing or printing for him to read, any of the testimony or other proceedings of the court.

I also testify that it was generally known, and often commented upon in the daily papers and by the people who attended the trial, that he was unconscious of what was spoken by any one during the proceedings.

BLANCHE EAKER.

Subscribed and sworn to before me this 13th day of September, 1905.

[SEAL.] LEWIS F. LAKE,
Clerk Circuit Court

STATE OF ILLINOIS, } ss.
WINNEBAGO COUNTY, }

Daniel C. Richards, a resident of the City of Rockford, county and state above named, who being duly sworn, deposeth and says he has known George W. Felts since he was a boy; that for a number of years said George W. Felts has been very hard of hearing (or deaf); that it was hard to communicate with him even with the aid of a speaking tube or ear trumpet. Said affiant further says that he was in attendance at the trial of said Felts at the court house in the above named city and state in the Circuit Court at the January term, A. D. 1905, a considerable portion of the time when said trial was in progress; that said Felts did not have a fair trial for the reason there was no effort by the court, the attorneys conducting the trial, or other person to communicate to said George W. Felts by the use of the ear tube, by writing or other rational means, the purport of the testimony, either for or against him, during the time it was being given; that said Felts sat unconscious of what the evidence was throughout the various sessions of the court during the trial.

Said affiant further states that as a boy and man, until crippled with rheumatism, said George W. Felts was considered an industrious boy and man. The holding an honorable discharge and allowance of pension by the government should offset the assertion of State's Attorney North that he was a shirk as a soldier.

DAN'L C. RICHARDS.

Subscribed and sworn to before me this 13th September, 1905.

[SEAL.] LEWIS F. LAKE,
Clerk Circuit Court.

STATE OF ILLINOIS, } ss.
WINNEBAGO COUNTY, }

I, Henry R. Howe, of the City of Rockford, County of Winnebago, and State of Illinois, being first duly sworn, on oath testify that I was present at different times during the trial of George W. Felts, in the Circuit Court held in Rockford, Illinois, in the January term, A. D. 1905.

I testify that I have known the said George W. Felts personally since 1862, and I have always known him to be possessed of those noble impulses and qualities of heart and mind that go to make up a true and loyal man. He has been partially deaf since his exposure and suffering as a soldier in the war for the Union, and for quite a number of years, in order to converse with him at all it is necessary to be close to him and speak carefully and distinctly through the ear tube. He continually wears this tube suspended from his neck for that purpose. I testify, under oath, that at no time during my presence in the court room, while the witnesses for the prosecution and the defense were being examined, was the said George W. Felts communicated with in any manner, by the ear tube, or printing, or writing, so that he could know anything that was said by any of the witnesses, nor were any of the proceedings of the trial conveyed to him at any time when I was present by any one.

It was a pitiable sight to see this old, broken-down veteran soldier the central object of idle curiosity, being tried for his life that he once so freely offered to save his country, without being made to understand the nature and extent of the accusations being made against him at the time.

H. R. HOWE.

Subscribed and sworn to before me this 14th day of September, 1905.

[SEAL.] LEWIS F. LAKE,
Clerk Circuit Court.

STATE OF ILLINOIS, } ss.
WINNEBAGO COUNTY, }

I, J. F. Eaker, of the City of Woodstock, State of Illinois, first being duly sworn, on oath testify that I was present during the trial of George W. Felts, held in the court house,

in the City of Rockford, in the above mentioned county and state, in the Circuit Court, January, 1905, A. D.

I testify that I sat by his side nearly every session of the court during his trial, and I know that no one repeated to him any of the proceedings of the trial, either the testimony or anything else while the trial was in progress.

I testify that no one talked through his tube, or wrote out for him, or printed for him, any of the proceedings of the court while I was present. I was also present and heard the state's attorney when he falsely attacked the character, and the soldier record of George W. Felts.

This was a cruel and grievous thing for him to do, when this poor old patriot had lost his hearing, from his exposure and sickness in the service of his country, and when, as I believe, and he testifies, that his deafness was the principal reason for his fright, in being, as he thought, the victim of a hold-up, in the midnight hour of a dark night. I believe he is suffering a most unjust imprisonment for being compelled, as he thought, to act in self-defense.

J. F. EAKER.

Subscribed and sworn to before me this 2d day of October, A. D. 1905.

[SEAL.] THEO. HAMER,
Clerk of the Circuit Court in the County of McHenry and State of Illinois.

STATE OF ILLINOIS, }
WINNEBAGO COUNTY, } ss.

I, Will Kenyon, of the City of Rockford, County of Winnebago, State of Illinois, first being duly sworn, on oath testify that I was present throughout the trial of George W. Felts, held in the court house in the City of Rockford, Illinois, in the January term of the Circuit Court, A. D. 1905. I testify that it was known to me and known to the trial court, and admitted both by the attorneys and the witnesses on both sides, that he went through the trial unable to hear any of the proceedings.

I testify under oath that I sat in about six feet of the prisoner during the trial, seldom farther away, and as I had to look past him to observe the jury when they were being chosen, and the witnesses when they were testifying, I know

that no one communicated to him any of the proceedings, as the trial progressed, and it was generally conceded that he knew no more of what was said for or against him during the trial, than he would had he been miles away.

WILL KENYON.

Subscribed and sworn to before me this 27th day of September, 1905.

[SEAL.] LEILA I. SWEET,
Notary Public.

WINNEBAGO COUNTY, }
STATE OF ILLINOIS, } ss.

I, Dorothy Kenyon, of the City of Rockford, County of Winnebago, and State of Illinois, being first duly sworn, on oath testify that I was present during the greater part of the trial of George W. Felts, held in the court house, in the said city, county and state, in the January term of the Circuit Court, A. D. 1905.

I testify under oath, that I knew, and believe it was generally known, that the said George W. Felts is only able to hear, when the speaker is close to him, and speaks with the mouth at the mouthpiece of the ear tube. That it was known to all present, was manifest, when the jury was being chosen, as no one noticed him any more than as though he had been a disinterested stranger. The questions and the answers were none of them repeated to him, and from that time, no one used his ear tube to communicate with him, anything that any witness said or by writing or printing informed him of any of the proceedings of the court while the trial was in progress. His attorney in defending him stated that he had heard no word that was said, and the prosecuting attorney also referred to the fact of his deafness, as did the various witnesses. In fact the sad truth was known to all that he was passed through his trial, unconscious of what was said or done either for or against him.

MRS. DOROTHY KENYON.

Subscribed and sworn to before this 27th day of September, 1905.

[SEAL.] LEILA I. SWEET,
Notary Public.

STATE OF ILLINOIS, } ss.
WINNEBAGO COUNTY. }

I, Ruth Baldwin, of the City of Rockford, County of Winnebago, and State of Illinois, first being duly sworn, on oath testify that I was present during the trial of George W. Felts, held in the court house, in the said state, county and city, in the January term of the Circuit Court, A. D. 1905.

I testify that I knew the prisoner, said George W. Felts, to be a deaf man, who can hear only when spoken to through an ear tube, and that it was known to all present, was manifest when the jury was being chosen, as no one noticed him any more than as though he had been a disinterested stranger. The questions and the answers were none of them repeated to him, and from that time on no one used his ear tube to communicate to him anything that any witness said, or by writing or printing inform him of any of the proceedings of the court while the trial was in progress. His attorney in defending him stated that he heard no word that was said, and the prosecuting attorney also referred to the fact of his deafness, as did the various witnesses, and the sad fact was known to all that he was passed through his trial unconscious of what was said or done, either for or against him.

MRS. RUTH BALDWIN.

Subscribed and sworn to before me this 27th day of September, 1905.

[SEAL.] LEILA I. SWEET,
Notary Public.

STATE OF ILLINOIS, } ss.
WINNEBAGO COUNTY. }

I, Ernest Baldwin, of the City of Rockford, County of Winnebago, State of Illinois, being first duly sworn, on oath testify, that I was present during one day, or two sessions, of the Circuit Court of said county and state, held at the court house, in the City of Rockford, Illinois, in the January term, A. D. 1905.

I testify that I knew the prisoner to be a deaf man, and it was generally known that he could only hear through the ear tube that for years he has carried around his neck for

that purpose. I testify that while I was present, through one day, or the forenoon and the afternoon sessions of the court, that no one attempted to communicate with him, either through the tube or by writing or by printing, or any other way, the proceedings of the court. It seemed to many of us monstrous injustice at the time, that this deaf old soldier, or any one else, so afflicted, should be tried for his life, not being able to know what was said against him, and having no chance to defend himself.

ERNEST V. BALDWIN.

Subscribed and sworn to before me this 27th day of September, 1905.

[SEAL.]

LEILA I. SWEET,
Notary Public.

STATE OF ILLINOIS, } ss.
WINNEBAGO COUNTY. }

I, Myron Franklin, of the City of Rockford, County of Winnebago, State of Illinois, being first duly sworn, on oath testify, that I was present, part of the time, during the trial of George W. Felts, held at the court house in the City of Rockford, Illinois, in the January term of the Circuit Court, A. D. 1905.

I testify that I knew the prisoner, George W. Felts, to be a deaf man, who can only hear, when spoken to through an ear tube, when the person speaking is close to him, speaking in the mouthpiece of the tube. I was present one day during his trial when the witnesses were testifying, and I was present at other times.

I testify, under oath, that no one attempted to speak to him through his ear tube, nor to communicate to him by writing or printing anything that the witnesses said, nor to make him acquainted, in any manner, with any of the proceedings of the trial while I was present.

MYRON FRANKLIN.

Sworn to and subscribed before me this 26th day of September, 1905.

[SEAL.]

LEWIS F. LAKE,
Clerk Circuit Court.

STATE OF ILLINOIS, } ss.
WINNEBAGO COUNTY. }

I, Julia A. Potter, of the City of Rockford, County of Winnebago, and State of Illinois, first being duly sworn, on oath testify, that I was present during four sessions of the Circuit Court at the trial of George W. Felts, held in the court house, in the City of Rockford, State of Illinois, in the January term, 1905, A. D.

I testify that I knew the prisoner, George W. Felts, to be a deaf man, who can only hear when spoken to through an ear tube, with the person close to him speaking through the mouthpiece of the ear tube. I sat where I could see him during four sessions of the court, and I saw no one attempt, to inform him, by the use of the tube, or by writing or printing, any of the testimony against him, nor any other proceedings of the court. His inability to hear was generally known, and often remarked upon in the press, and by the people.

JULIA A. POTTER.

Sworn to and subscribed before me this 26th day of September, 1905.

[SEAL.] LEWIS F. LAKE,
Clerk Circuit Court.

STATE OF ILLINOIS, } ss.
WINNEBAGO COUNTY. }

I, Byron MacGraw, of the Town of Pecatonica, County of Winnebago, State of Illinois, first being duly sworn, on oath testify that I was present nearly all of the time during the trial of George W. Felts, in the court house, in the City of Rockford, in the aforesaid county and state, in the January term, 1905.

I testify, under oath, that no one attempted to repeat to him, either through his ear tube, or to write out for him to read, or to typewrite or print for him any of the testimony of the witnesses, or any other word that was said by any one during his trial. It was known and admitted that he was deaf by all connected with the court, and generally known to all present. The impression seemed to be that because he was deaf he had lost all his rights as a citizen, and that

it was not necessary to let him know any of the details of the trial. It was not necessary to deprive him of his right to a legal trial, as he can read both writing and printing as well as any one. Such treatment was particularly grievous in his case, because his deafness was the occasion of his trouble in the first place. According to his testimony, which was believed by his attorney and by many of the best citizens of the county, he, this deaf old soldier, was made the victim of a practical joke by three men near midnight, when there was no moon, and no light on the street, or the windows where he was passing. The three men had been drinking, and as he stepped upon the sidewalk, one ran against him, one had his foot out to trip him up, and another grasped him by the neck, coming from behind him. Finding that he could not get loose, he, the prisoner, undertook to prick the man in the leg with a small pocket knife, not expecting to do any serious harm and not knowing who his assailant was. Just as he put the knife back the man came under him with his knee, to kick him forward, and if it was his knife that made the wound, that was when and how it was done. It was claimed that the loud laughter of the men at the time showed that they were only in fun, but as he could not hear the laughter, nor a word that they said, and could not see who it was, it was serious business to him.

I testify, under oath, that I have known him for more than twenty years, and know that he is a kind-hearted, good man, who would not maliciously injure any one, and that he has always been a law-abiding citizen. I also know that he was a particular friend of the man who was cut, and had he known who it was he would not have been frightened and would not have used his knife. On account of his deafness and the darkness of the night, he, George W. Felts, was justified in believing that he was the victim of a vicious hold-up.

BYRON MCGRAW.

Subscribed and sworn to before me this 27th day of September, 1905.

F. A. SHERLOCK, *J. P.*

[SEAL.]

STATE OF ILLINOIS, } ss.
WINNEBAGO COUNTY. }

I, John C. Felts, of the Town of Jesup, State of Iowa, first being duly sworn, on oath testify, that I was present nearly all the time during the trial of George W. Felts, in the court house, in the City of Rockford, in the County of Winnebago, and State of Illinois, in the Circuit Court, in the January term, 1905, A. D.

I testify, that I sat near him all the time, and by his side during most of the days when I was present. I sat by him during the time the evidence was being presented, and I testify, under oath, that no provision was made at any time, during the many days I sat by his side, and near him, to communicate to him, in any way, either by speaking through his ear tube, which he carries around his neck for that purpose, nor by writing, or printing, for him to read, any of the testimony, nor any other proceedings of the court, while I was present.

I also testify, that the state's attorney went outside of the evidence and introduced damaging statements, that were wholly untrue, and by false and furious denunciation, prejudiced the jury. He was particularly insulting, in belittling the faithful, and honorable record of George W. Felts, who, as a patriotic soldier, in the war for the Union, almost lost his life, and did lose his hearing.

I also testify, that it is my belief, and the belief of a large number of persons, who were present at the trial, that George W. Felts, because he was deaf, and could not hear the laughter of the men who seemed to be waylaying him, thought that he was the victim of a hold-up in the midnight darkness. It was proven by the witnesses for the state, that there was no moon and no light in the streets, and is well known that he can not see very well, being between sixty and seventy years of age. He, and the man who was cut, had always been friends, and, had he known who it was that came upon him, he would not have been frightened into trying to prick the man with his pocket knife.

I testify, that George W. Felts has always been a generous, kind-hearted man, especially forbearing in provocation, and that the state's attorney, in asserting the contrary, and in pretending that the said George W. Felts was ever an idle

man, went outside of the evidence and falsely accused one of the most industrious men I ever knew.

J. C. FELTS.

Jesup, Buchanan county, Iowa.

Subscribed and sworn to this 2d day of October, 1905, before me.

H. S. RICH,

Justice of Peace of Perry Township, Buchanan County, Iowa.

[SEAL.]

UNITED STATES SUPREME COURT. } ss.
UNITED STATES OF AMERICA, }

Affidavit of W. A. Wiseman,
In re
Petition
For writ of *habeas corpus*
For George W. Felts.

I, W. A. Wiseman, testify, under oath, that I was present at all the proceedings of the trial of George W. Felts in Rockford, Illinois, who was tried and convicted for murder of Spencer Post, trial beginning January 16, 1905, and lasting about two weeks.

First: The prisoner, George W. Felts, did not have a fair trial, as he is deaf and could not hear the testimony nor the pleadings against him, and there was no effort made to furnish him a copy of either at the time, and he was very much surprised at different things which were reported in the newspapers from time to time and which he was permitted to read after it was too late for him to make any satisfactory use of them.

Second: The state's attorney, Harry B. North, went outside the evidence and made accusations in his statement and pleadings which are not true, and which I believe resulted in the conviction of George W. Felts; for instance:

(a) He told the jury that the prisoner was an idle man. This was not proven and is not true. He was an industrious man until he was almost completely broken down by rheumatism, and what they call "blacksmith's heart," and was not an idle man even after that.

(b) The said Harry B. North also made false and damaging statements in his pleadings before the jury in regard to the prisoner's soldier record, thus discrediting a loyal and patriotic soldier who lost his hearing from months of faithful service and came very near losing his life, and holds an honorable discharge from the United States government.

(c) The said Harry B. North also claimed that George W. Felts was looking for trouble on the streets the night that Spencer Post was killed, when it was proven by three witnesses that he was looking for men who were to haul wood for him the next day, and no one testified that he was looking for trouble.

(d) The said Harry B. North showed the jury how the prisoner held his knife at the time the stabbing was done, and declared it was the assassin's grip, when there was nothing in the evidence of the state's witnesses to indicate anything of the kind as to the manner in which it was done.

(e) The said Harry B. North also declared to the jury that Attorney R. K. Welsh, for the defense, had invented the story that Spencer Post was on George Felts and had taught it to the prisoner, when the evidence shows that two of the state's witnesses, namely: Marshal Weaver and Deputy Sheriff Adam Shorb, testified that he told them a similar story at the time he was arrested, while several others of the state's witnesses testified that George W. Felts said he was acting in self-defense, and that he could prove it, supposing that James Gaylord and Charles Hodges would testify as to what occurred there that night, as they were present.

(f) I believe the said Harry B. North, by going outside of the evidence at times, and contradicting it at other times in his pleadings, succeeded in misleading the jury and putting the prisoner, George W. Felts, into the Joliet prison for life, thus outraging justice and punishing an innocent and almost helpless man.

(g) Most of the damaging statements made by State's Attorney Harry B. North were made in his closing plea, so that the attorney for the defense could not answer them in open court, and thus the last impression made upon the jury was, to say the least of it, based upon falsehood and misrepresentation.

(h) For the foregoing reasons, I ask that the writ of *habeas corpus* be granted George W. Felts, as prayed for in the petition.

W. A. WISEMAN.

Subscribed and sworn to before me this 1st day of March, A. D. 1905.

ELSIE JAYNE HOUSE,
Notary Public.

[SEAL.]

"EXHIBIT 5A"

Rockford, Ill., March 8, 1905.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK, }

IN THE CIRCUIT COURT OF SAID COUNTY.

The People of the State of Illinois
ex rel. George W. Felts.
vs.
E. J. Murphy, Warden of the Illinois
State Penitentiary of Joliet, Ill.

OPINION OF THE COURT.

It is claimed in behalf of the relator in this case, that at the trial, at which he was convicted, he was unable on account of deafness to hear anything that was said by the witnesses against him, and, that because of this fact, he was denied the right guaranteed to him by the constitution of this state. "To meet the witnesses face to face." This clause, he claims, carries with it by necessary implication, the right to hear what the witnesses are saying.

It is further claimed that, although a Criminal Court may originally have jurisdiction of the person of the defendant and of the subject-matter of the case, it may lose its jurisdiction to render any judgment against the defendant if, during the course of the trial, the defendant is deprived of one of the substantial rights guaranteed to him by the constitution.

Good color for this latter claim is found in the case of Hans Nielson, petitioner, 131 U. S., 176.

In deciding the present case, however, it does not seem necessary to refute any of the contentions above made in behalf of the relator, for, conceding them to be true, as applied to this case, the determination of this case rests upon considerations, which had been overlooked by the relator in his brief.

If we concede that the judgment sentencing the relator in this case was void, what conclusion follows from that? What are the rights of the relator in that event?

If the contention of the relator be correct, his trial was a nullity, that is, he is still resting under an indictment, the validity of which is not attacked, and he has had no trial. His rights, therefore, are to have the void judgment expunged from the record, or vacated and set aside, and to have a legal trial under his indictment.

This is very different, however, from saying that he has the right *to go free,* and be forever absolved from all consequences of the crime charged against him.

The function of the proceedings in *habeas corpus* is to secure the relator in his right to his freedom, if he has such a right, but it is not the function of such proceeding to set him free when his legal situation is such that further judicial action is necessary before he can be acquitted.

Where an application for a writ of *habeas corpus* is made and it appears to the court that the relator is not entitled to his freedom, and that there are other appropriate tribunals from which he may secure the redress to which he is entitled, the court will deny the application and remit him to the other appropriate forum, where, according to due process of law, he can attain that which is his right. This principle is clearly enunciated in the case of Swan, petitioner, 150 U. S., 637; and *U. S.* vs. *Pridgeon,* 153 U. S., 48. In the latter case it was stated: "There is no law or justice in giving to a prisoner relief under *habeas corpus* that is equivalent to an acquittal, when upon a writ of error, he could only have secured relief from that portion of the sentence which was void." (Page 63.)

The principle to be deduced from these cases is that a prisoner is not entitled to relief from that portion of the criminal proceeding against him which is valid, but is merely entitled to be relieved from that portion which is void.

In the case of the relator, the only tribunal which can relieve him from that portion of the proceeding against him, which was void, without relieving him from the proceeding altogether, is the Supreme Court, and this, upon a writ of error. This court upon a writ of *habeas corpus* has no such power.

The writ is accordingly denied.

"Exhibit 6x"

Opinion of Illinois Supreme Court.

SUPREME COURT OF ILLINOIS.

October Term, A. D. 1905.

Wednesday, October 4, 1905, 9 A. M.

CHIEF JUSTICE CARTWRIGHT.

4343. People's Docket. *People ex rel* vs. *Murphy, Warden.*

There is a motion for writ of *habeas corpus.* The petition for the writ sets out that the relator, Geo. W. Felts, was convicted in the Circuit Court of Winnebago County of the crime of murder, and sentenced to the penitentiary for life. The ground of the motion for the writ is that the sense of hearing of this defendant was so defective that he was not able to hear without an ear trumpet, that consequently he did not hear the witnesses, did not hear what was going on in the court during his trial. For that reason he was deprived of his constitutional right to hear the evidence and to know what was being done. It appears from the petition that he could hear what the sheriff said to him when he was called up for sentence. The court instructed the sheriff to explain to him. He understood what he said, but it appeared he did not have any ear trumpet during the trial. It is not claimed that a person whose hearing is defective might commit murder or whom he chose, and might not be tried or punished for the offense. If there were any error in the matter, it would only be ground for writ of error and review by the court, and order for a new trial, where he might be furnished with an ear trumpet or in some way made to hear what the witness said. But in the opinion of the court, the ground set forth

is no cause for a reversal of the judgment. On this writ, of course, all the court could do would be to discharge him and let him go free. The petition does not even set up he is not guilty of the homicide charged. It is apparent we think that this motion must be denied and it is denied.

COPY OF MITTIMUS.

UNITED STATES OF AMERICA,
STATE OF ILLINOIS, } ss.
WINNEBAGO COUNTY, }

IN THE CIRCUIT COURT, January term, A. D. 1905.

Pleas: Before the Honorable ARTHUR H. FROST, one of the judges of the Seventeenth Judicial Circuit of the State of Illinois, and presiding judge of the Circuit Court of Winnebago County, in the state aforesaid, at a term thereof begun and held at the court house, in the City of Rockford, in said county, on the second Monday (being the 9th day) of January, in the year of our Lord one thousand nine hundred and five, and of the Independence of the United States, the one hundred and twenty-ninth.

Present: Honorable ARTHUR H. FROST,
Judge.
LEWIS F. LAKE,
Clerk.
HARRY B. NORTH,
State's Attorney.
ALEX COLLIER,
Sheriff.

Attest:
LEWIS F. LAKE,
Clerk.

Be it remembered, that afterwards, on to-wit: On the 16th day of February, A. D. 1905, it still being one of the regular days of said term of said court, the following among other proceedings were had and entered of record, to-wit:

The People of the State of Illinois *vs.* George Felts. } Gen. No. 4330.

Indictment for murder, February 16, 1905.

This day come the said People by Harry B. North, State's Attorney, and the said defendant, George Felts, as well in his own proper person, as by R. K. Welsh, Esq., his counsel, also comes; and now neither the said defendant nor his counsel for him, saying anything further why the judgment of the court should not now be pronounced against him on the verdict of guilty, heretofore rendered to the indictment in this cause.

Therefore it is ordered and adjudged by the court that the said defendant, George Felts, who is convicted of the crime of murder, herein, be sentenced to the penitentiary of this state at Joliet, for the term of his natural life. And it is further ordered and adjudged that the said defendant, George Felts, be taken from the bar of this court to the common jail of Winnebago county, from whence he came, and from thence by the sheriff of Winnebago county, within ten days, to the penitentiary of this state, at Joliet, and be delivered to the warden or keeper of said penitentiary; and the said warden or keeper is hereby required and commanded to take the body of the said defendant, George Felts, and confine him in said penitentiary, in safe and secure custody, from and after the delivery thereof for the term of his natural life. The first day of each year to be in solitary confinement, and the balance of said time at hard labor. It is further ordered by the court that said defendant pay all the costs of these proceedings, and that execution issue therefor. And now said defendant,

by his counsel, excepts to the entering of said judgment. Whereupon it is ordered by the court that said defendant have ninety days in which to file his bill of exceptions.

CERTIFICATE OF THE CLERK OF THE COURT.

STATE OF ILLINOIS, } ss.
WINNEBAGO COUNTY, }

I, Lewis F. Lake, clerk of the Circuit Court, in and for the County of Winnebago, in the state aforesaid, do hereby certify that the above and foregoing is a true, perfect and complete transcript of the record of the final judgment or sentence entered of record in said court, in the case of the *People of the State of Illinois* versus *George Felts*, on the 16th of February, A. D. 1905; as appears of record in Criminal Record 5 of the records of said court, now remaining in this office.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Rockford this 21st day of February, A. D. 1905.

LEWIS F. LAKE,
Clerk of Circuit Court.

[SEAL.]

To the sheriff of Winnebago County to execute.

I, Syd W. Wetmore, record clerk of the Illinois state penitentiary, do hereby certify that the within is a true, complete, and correct copy of a *mittimus* now on file in my said office in the case of the *People of the State of Illinois* vs. *George Felts*.

Witness my hand and the seal of said penitentiary at Joliet, this 14th day of March, A. D. 1905.

SYD W. WETMORE,
Record Clerk.

(Endorsed.) Filed Nov. 13 1905
Marshall E Sampsell
Clerk

And on to-wit: the twenty-fifth day of November, there was filed in the clerk's office of said Court *nunc pro tunc* as of November 13th, 1905, a certain amendment to petition in words and figures following to-wit:

Amendment to Petition.

United States of America, Seventh Judicial Circuit.

PEOPLE *ex Rel.* GEORGE W. FELTS
vs.
E. J. MURPHY, Warden.

Now comes the said relator, the said George W. Felts, and by leave of court heretofore had, by adding to his petition the following:

Your petitioner further represents that it is impossible for him to appeal from the judgment of the said Circuit Court of Winnebago County to the Supreme Court of Illinois for the reason that the time for the bill of exceptions has long since past and that he cannot take his said case to the said Supreme Court of the State of Illinois upon a writ of error for the additional reason that he cannot in person or through his friends procure the money necessary to-wit: over eight hundred dollars ($800.00) to write up the evidence taken upon the trial of his said cause, and that therefore he is denied the privileges and immunities enjoyed by other citizens of the state of Illinois who are able to furnish money to have their constitutional rights heard and passed upon by at least one of the courts of this country.

GEORGE W. FELTS,
By WM. E. MASON, *His Sol'r.*

(Endoresd:) Filed Nov., 25, 1905, *nunc pro tunc* as of Nov., 13, 1905, Marshall E. Sampsell, Clerk.

And on to-wit: the thirteenth day of November, being one of the days of the regular July term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

Order of November 13, 1905.

27976.

In the Matter of the Petition of GEORGE W. FELTS for a Writ of *Habeas Corpus.*

Upon filing the petition, It is Ordered that a writ of *Habeas Corpus* issue forthwith returnable by November 17th, 1905 at two o'clock P. M.

And on to-wit: the fourteenth day of November, 1905, there issued out of the clerk's office of said Court a certain Writ of *Habeas Corpus*, directed to the Marshal of said District to execute, which said writ together with the Marshal's return thereon endorsed is in the words and figures following to-wit:

Circuit Court of the United States of America, Northern District of Illinois, Eastern Division, ss.

THE UNITED STATES OF AMERICA:

To E. J. Murphy Warden of the Illinois State Penitentiary at Joliet, State of Illinois, Greeting:

We command you that you do without excuse or delay, bring or cause to be brought before the Circuit Court of the United States of America, for the Northern District of Illinois Eastern Division, now sitting in the Court Room of said Circuit Court, in the City of Chicago, in said District on Friday at two o'clock P. M. November 17th, 1905, the body of George W. Felts, by whatever name or addition he is known or called, and who is unlawfully detained in your custody, as it is said, together with the day and cause of his caption and detention then and there to perform and abide such order and direction as our said Circuit Court shall make in that behalf. Hereof make due return under the penalty of what the law directs.

To the Marshal of the Northern District of Illinois to execute.

Witness, the Hon. Melville W. Fuller, Chief Justice of United States of America, at Chicago, aforesaid, this fourteenth day of November in the year of our Lord one thousand nine hundred and five and of our Independence the 130th year.

[SEAL.] MARSHALL E. SAMPSELL, *Clerk.*

Marshal's Return.

I have served this writ in my district in the following manner to-wit:

Upon the within named E. J. Murphy, Warden of the Illinois State penitentiary, at Joliet, Illinois by reading the same to and within the presence and hearing of the said E. J. Murphy, and at the same time delivering to him personally a true copy thereof on this the 15th day of November, A. D. 1905.

JOHN C. AMES,
U. S. Marshal.
J. G. REUL, *Deputy.*

(Endorsed:) Filed Nov., 17, 1905 Marshall E. Sampsell, Clerk.

And on to wit: the fourteenth day of November, 1905, there was filed in the clerk's office of said Court in said entitled cause a certain petition for leave to sue as a poor person, which said petition is in the words and figures following to-wit:

Petition for Leave to Sue as a Poor Person.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division, ss.

In the Matter of the Petition of GEORGE W. FELTS for a Writ of *Habeas Corpus.*

Your petitioner, Wm. E. Mason, respectfully represents that he is the attorney for the petitioner herein, George W. Felts, and that upon information and belief he verily believes that said petitioner has no money to prosecute this suit, that he has no means of procuring any; that he is confined in the penitentiary of the State of Illinois at Joliet and has no friends, or other persons interested in the event of this suit, to provide funds for the prosecution of the same; that he is a citizen of the United States and entitled to the protection of the Government.

And that there is no agreement or understanding upon the part of either the said petitioner, or his attorney whereby the petitioner has parted or promised to part with, or turn over any portion of his interest in the suit or the recovery or in case such agreement or understanding has been entered into, the same is hereby renounced and cancelled;

And that there shall be no such agreement, promise or assignment during the time this case remains upon the docket of this or any appellate court without consent of the Court having been first obtained.

And that the recovery, if any there be, shall go into the hands of the clerk of this court, to be distributed as follows:

1st. To indemnify the clerk and marshal against any proper costs, taxable to the plaintiff herein, not recovered from the defendant.

2nd. A reasonable attorney's fee for the counsel and attorneys for the petitioner, the amount thereof to be fixed by the Court.

WM. E. MASON.

Subscribed and sworn to before me this 14th day of November, A. D. 1905.

LEWIS F. MASON,
U. S. Commissioner.

(Endorsed:) Filed Nov., 14, 1905, Marshall E. Sampsell, Clerk.

And on to-wit: the fourteenth day of November, being one of the days of the regular July Term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

Order of November 14, 1905.

Leave Given to Prosecute as a Poor Person.

27976.

In the Matter of the Petition of GEORGE W. FELTS for a Writ of *Habeas Corpus.*

Upon reading the petition, filed herein on the 13th instant, It is Ordered that leave be, and the same is hereby given said petitioner, George W. Felts, to prosecute this suit as a poor person without payment of costs to any of the officers of this Court.

And on to-wit: the seventeenth day of November, 1905, there was filed in the clerk's office of said Court in said entitled cause the certain affidavits of W. A. Wiseman and Matilda Fletcher Wiseman, which said affidavits are respectively in the words and figures following to-wit:

STATE OF ILLINOIS, *County of Cook, ss:*

I, W. A. Wiseman, first being duly sworn, on oath, testify: That I was present during the trial of George W. Felts January, 1905, at Rockford, Illinois. He said in open court at least twice, that he had not heard a word that was testified against him, once, when he was making his statement under oath. I know him well and knew that he was telling the truth when he said he could not hear what was being said during the progress of the trial. I felt very sorry for him, and knew that it was unfair to try a man for his life in that way, but did not know his constitutional rights at that time, and that it was the duty of the court to protect him in those rights.

One morning before the Court was called to order, I went to every business house in Rockford, where I thought it was probable they might have some kind of an ear tube that would enable him to hear what was being said. But I failed to find any instrument that would answer the purpose, and so the trial went on as usual, the prisoner remaining in total ignorance of the proceedings.

W. A. WISEMAN.

Subscribed and sworn to before me, this 22nd day of November, 1905.

[SEAL.]

THOMAS H. ROBINSON,
Notary Public.

STATE OF ILLINOIS, *County of Cook, ss:*

I, W. A. Wiseman, of the city of Des Moines, County of Polk, and State of Iowa, first being duly sworn, on oath testify that I was present during the trial of George W. Felts held in the court house in the city of Rockford, County of Winnebago, State of Illinois, in the January term of the Circuit Court, A. D. 1905.

I testify that I was present when the said George W. Felts was put on the witness stand to testify in his own behalf.

During his direct examination, his own attorney was compelled to speak to him by placing his mouth close to the mouth piece of the ear tube, which the prisoner always brought with him to the court room, in the hope that some one would inform him through that instrument of the proceedings of the court.

During the cross examination which was conducted by the State's Attorney, and which lasted about three (3) hours, every question was asked the prisoner, only through the ear tube by said State's Attorney placing his mouth in close proximity to the mouth piece of the ear tube. Even by this mechanical means, the task was so difficult and required so much effort on the part of said State's Attor-

ney, to make the accused hear and understand what he said, that at the close of the examination, the said State's Attorney was almost exhausted.

W. A. WISEMAN.

The foregoing affidavit subscribed and sworn to before me this 15th day of Nov., 1905.

THOMAS H. ROBINSON,
[SEAL.] *Notary Public.*

(Endorsed:) Filed Nov., 17, 1905, Marshall E. Sampsell, Clerk.

STATE OF ILLINOIS, *County of Cook, ss:*

I, Matilda Fletcher Wiseman, first being duly sworn on oath testify, That in view of the statement of Harry B. North, that the persons whose affidavits accompany the petition for *habeas corpus* of George W. Felts, are his relatives, and that they have testified falsely as to his deafness and to the fact that he did not hear and could not know the proceedings of the court that tried him, it becomes my duty to inform the court that the people who sent in the affidavits are all well-known as good citizens who testify to the truth because it is the truth.

H. R. Howe is not a relative of George W. Felts, and is well and favorably known to Rockford and has long been associated with its educational interests.

George A. Preston is an old resident of Rockford, known to be an honest, truthful, responsible citizen. He is not a relative of George W. Felts.

Miss Blanche Eaker is well known as a refined christian lady and is not a relative of George W. Felts.

Several are second cousins of George W. Felts, but they are well known to be truthful, upright, good citizens. Among them are:—The Franklins, one of them, Oscar Franklin, in his affidavit vouches for the honorable soldier record of George W. Felts which was falsely attacked by the State's Attorney in his closing speech. Five of the persons who sent in affidavits are nephews and nieces of the wife of the man who was wounded in the midnight hold-up of George W. Felts. They sat close to the defendant and knew and testified to the truth. The names of these persons are: Byron McCraw, Will Kenyon, Ernest V. Baldwin, Dorothy Kenyon, Ruth Baldwin. Of the others Rev. W. A. Wiseman, is a methodist preacher in good standing. Rev. J. F. Eaker, is a baptist clergyman and pastor of the baptist church at Woodstock, Illinois, D. C. Richards is an old

soldier and a good citizen whose word would be taken in any Court. He was a long time Justice of the Peace in another place. Edwin B. Rowley is a prominent man known to everyone as an honest good citizen. Mrs. Potter is one of the best women in the city. Mrs. Sarver is a sister of George W. Felts and is well known as a truthful, good woman. J. C. Felts is a brother of George W. Felts and is a man of good habits and good principles. As for myself, I can only say that to the best of my knowledge and belief, all the affidavits, my own included, set forth the truth.

To fortify our testimony and convince the court of its truth, I attached hereto an official document, the pension certificate, from the United States government which explains itself.

MATILDA FLETCHER WISEMAN.

Subscribed and sworn to before me, this 22nd day of November, 1905.

THOMAS H. ROBINSON,
[SEAL.] *Notary Public.*

No. 439093. Original.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
BUREAU OF PENSIONS.

It is hereby certified that in conformity with the laws of the United States, George W. Felts, who was a Private, Company H. 74 Regiment, Illinois Volunteer Infantry is entitled to a pension at the rate of twelve dollars per month, to commence on the ninth day of October, on- thousand eight hundred and eighty-six and twenty five dollars per month from August 27, 1888. This pension being for "total deafness of left ear and severe deafness of right ear."

Given at the Department of the Interior this First day of July one thousand eight hundred and eighty nine and of the Independence of the United States of America the one hundred and thirteenth.

(Signed) JOHN W. NOBLE,
Secretary of the Interior.

Countersigned,
(Signed) HIRAM SMITH, JR.,
Action Commissioner of Pensions.

That section forty seven hundred and forty five, title fifty seven of the Revised Statutes of the United States is hereby amended to read as follows:—

SECTION 4745. Any pledge, mortgage, sale, assignment or transfer of any right, claim, or interest in any pension which has been,

or may be hereafter *be* granted, shall be void and of no effect, and any person who shall pledge or receive as a pledge, mortgage, sale, assignment, or transfer of any right, claim or interest in any pension or pension certificate, which has been, or may hereafter be granted or issued or who shall hold the same as collateral security for any debt, or promise or upon any pretext of such security, or promise, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars and the costs of the prosecution; and any person who shall retain the certificate of a pensioner and refuse to surrender the same upon the demand of the Commissioner of Pensions or a United States pension agent, or any other person, authorized by the Commissioner of Pensions, or the pensioner, to receive the same shall be guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars and the costs of the prosecution.

Approved, February 28, 1883.

No. 439093. Pension Certificate of George W. Felts. Payable Quarterly on the 4th of March, June, September and December, of each year by the U. S. Pension Agent at Chicago, Illinois.

Transferred to
—— —— agency.
From —— ——,
Commissioner.

Transferred to
—— —— agency.
From —— ——,
Commissioner.

NOTE.—No sale, or transfer of any kind of the whole or any part of the Pension payable by virtue of this Certificate is of any legal or binding force against either the pensioner or the United States.

(Signed) McCOWAN, *Clerk.*

(Endorsed:) Filed Nov., 17, 1905, Marshall E. Sampsell, Clerk.

And on to-wit: the seventeenth day of November, 1905, came the respondent in said entitled cause, E. J. Murphy, Warden of the State Penitentiary at Joliet and filed in the clerk's office of said Court a certain return to writ in words and figures following to-wit:

In the United States Circuit Court in and for the Northern District of Illinois, Eastern Division.

GEORGE W. FELTS
vs.
E. J. MURPHY, Warden of the Illinois State Penitentiary.

Petition for Writ of Habeas Corpus.

Now comes the respondent, E. J. Murphy, warden of the Illinois State Penitentiary, and for the return of the Writ of *Habeas Corpus* served upon him in the above entitled cause, respectfully shows to the court that he is the Warden or Keeper of the Illinois State Penitentiary at Joliet, Illinois, and that he does not unlawfully hold or keep in charge, the said George W. Felts, but the said George W. Felts is a prisoner in the Illinois State Penitentiary at Joliet, Illinois, by virtue of a lawful judgment of the Circuit Court of Winnebago County, in the State of Illinois, entered at the January Term, A. D. 1905., of said Court in a certain suit prosecuted against the said George W. Felts, for the crime of murder, wherein the said George W. Felts was convicted thereof, and duly sentenced and adjudged to serve the term of his natural life, in the said State Penitentiary, at Joliet, and the said George W. Felts, in obedience to said judgment, was delivered to the Warden of said Penitentiary and to hold him by virtue of said judgment, a certified copy of which is hereto annexed, and marked Exhibit "A," and made a part thereof, and he holds said George W. Felts not otherwise than by said lawful judgment, and he further shows, your Honor, that he has the said George W. Felts personally here in court, in response to the said Writ of *Habeas Corpus*.

This 17, day of November, A. D. 1905.

E. J. MURPHY,
Warden of the Illinois State Penitentiary.

EXHIBIT —.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, *Winnebago County, ss:*

In the Circuit Court, January Term, A. D. 1905.

Pleas, Before the Honorable Arthur H. Frost, one of the Judges of the Seventeenth Judicial Circuit of the State of Illinois, and pre-

siding Judge of the Circuit Court of Winnebago County, in the State aforesaid, at a term thereof begun and held at the Court House, in the City of Rockford, in said County, on the second Monday (being the 9th day) of January in the year of our Lord one thousand nine hundred and five, and of the Independence of the United States the one hundred and twenty-ninth.

Present: Honorable Arthur H. Frost, Judge; Lewis F. Lake, Clerk; Harry B. North, State's Attorney.

Attest: LEWIS F. LAKE, *Clerk.*

Be it remembered, that afterwards, on towit: *on* the 18th day of February A. D. 1905, it still being one of the regular days of said term of said Court, the following among other proceedings were had and entered of record towit:—

Gen. No. 4330.

THE PEOPLE OF THE STATE OF ILLINOIS
vs.
GEORGE FELTS.

Indictment for Murder, February 16th, 1905.

This day come the said People by Harry B. North, State's Attorney, and the said defendant, George Felts, as well in his own proper person, as by R. K. Welsh, Esq., his counsel also comes; and now neither the said defendant nor his counsel for him saying anything further why the Judgment of the Court should not now be pronounced against him on the verdict of guilty, heretofore rendered to the indictment in this cause,

Therefore, it is ordered and adjudged by the Court that the said defendant George Felts, who is convicted of the crime of murder, herein, be sentenced to the Penitentiary of this State at Joliet, for the term of his natural life. And it is further ordered and adjudged that the said defendant George Felts, be taken from the bar of this Court to the common Jail of Winnebago County, from whence he came and from thence by the Sheriff of Winnebago County within ten days, to the Penitentiary of this State, at Joliet, and be delivered to the Warden or Keeper of said Penitentiary; and the said Warden or Keeper is hereby required and commanded to take the body of the said defendant George Felts and confine him in said Penitentiary, in safe and secure custody, from and after the delivery thereof, for the term of his natural life; The first day of each year to be in solitary confinement, and the balance of said time at hard

labor. It is further ordered by the Court that said defendant pay all the costs of these proceedings, and that execution issue therefor, and now said defendant, by his counsel excepts to the entering of said Judgment; whereupon it is ordered by the court that said defendant have ninety days in which to file his bill of exceptions.

STATE OF ILLINOIS, *Winnebago County, ss:*

I, Lewis F. Lake, Clerk of the Circuit Court, in and for the County of Winnebago, in the State aforesaid do hereby certify that the above and foregoing is a true perfect and complete transcript of the record of the Final Judgment or sentence entered of record in said Court, in the case of the People of the State of Illinois *versus* George Felts, on the 16th day of February A. D. 1905, as appears of record in Criminal Record 5 of the Records of said Court, now remaining in this office.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in Rockford, this 21st day of February A. D. 1905.

[SEAL.]

LEWIS F. LAKE,
Clerk Circuit Court.

To the Sheriff of Winnebago County to execute.

I Syd W. Wetmore Record Clerk of the Illinois State Penitentiary do hereby certify that the within is a true and correct Copy of a mittimus now on file in my said office to wit: The People of the State of Illinois *versus* George Felts.

Witness my hand and the seal of said Penitentiary at Joliet this 14th day of November A. D. 1905.

[SEAL.]

SYD W. WETMORE,
Record Clerk.

No. 4330.

Winnebago County Circuit Court.

PEOPLE OF THE STATE OF ILLINOIS
versus
GEORGE FELTS.

Penitentiary Mittimus.

Executed by delivering the body of the within named Defendant to the Warden of the Penitentiary at Joliet this 24th day of February 1905.

ALEX. COLLIER, *Sheriff.*

(Endorsed:) Filed Nov. 17, 1905. Marshall E. Sampsell, Clerk.

And on to-wit: the seventeenth day of November, being one of the days of the regular July term of said court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

Order of November 17, 1905.

In the Matter of the Petition of GEORGE W. FELTS for a Writ of *Habeas Corpus.*

Now on this day comes the petitioner, and comes also the respondent E. J. Murphy, the Warden of the Illinois State Penitentiary at Joliet, and now comes on to be heard the motion of said petitioner for a discharge under the writ of *habeas corpus* heretofore issued herein, and the respondent herein appearing by Mr. George B. Gillespie and Mr. Harry B. North, and thereupon said respondent has leave to file instanter his return to said writ; and the Court having heard arguments upon said motion for discharge and not being sufficiently advised in the premises takes time to consider.

And on to-wit: the twenty-fifth day of November, being one of the days of the regular July Term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

In the Matter of the Petition of GEORGE W. FELTS for a Writ of *Habeas Corpus.* 27976.

Now again come the parties by their attorneys and leave is given the petitioner to file instanter an amendment to the petition herein *nunc pro tunc* as of November 13th, 1905; and the Court having considered and being now fully advised upon the motion of said petitioner for a discharge under said writ of *Habeas Corpus,* heretofore issued herein, overrules and denies said motion, and said prisoner is remanded to the custody of the Warden of the Joliet penitentiary of the State of Illinois; and thereupon said petitioner enters his motion for an appeal to the Supreme Court of the United States which is allowed upon said petitioner filing his assignment of errors herein and the clerk is hereby directed to prepare a transcript of the record herein for said Supreme Court without costs to said petitioner.

And on to-wit: the sixth day of December, 1905, came the petitioner i nsaid entitled cause by Mr. William E. Mason and filed in

the clerk's office of said Court a certain Assignment of Errors in words and figures following to-wit:

Assignment of Errors.

UNITED STATES OF AMERICA, *Seventh Circuit:*

In the Circuit Court of the United States, Seventh Circuit.

PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* GEO. W. FELTS
vs.
C. J. MURPHY, Warden, etc.

Assignment of Errors.

The Court erred in refusing to grant the Writ of *Habeas Corpus* and in refusing to discharge the prisoner, as prayed for in the Writ.

GEO. W. FELTS,
By WM. E. MASON,
His Solicitor.

(Endorsed:) Filed Dec., 6, 1905, Marshall E. Sampsell, Clerk.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

27976.

PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* GEORGE W. FELTS
vs.
E. J. MURPHY, Warden.

To the Clerk of the above entitled Court:—

You will please prepare transcript of the record in this cause, to be filed in the office of the clerk of the United States Supreme Court, under the appeal heretofore perfected to said Court and include in the said transcript the following pleadings, proceedings and papers on file, to-wit:

Petition for Writ of *Habeas Corpus* filed Nov., 13, 1903.

Amendment to Petition filed Nov., 25, 1905, as of Nov., 13, 1905.

Order of Nov., 13, 1905.

Writ of *Habeas Corpus* issued Nov., 14, 1905, together with the return thereon endorsed.

Petition for leave to sue as a poor person filed Nov., 14, 1905.

Order of Nov., 14, 1905, leave to sue as a poor person.
Affidavits of W. A. Wiseman, *et al.* filed Nov., 17, 1905.
Return of E. J. Murphy, Warden filed Nov., 17, 1905.
Orders of November 17, and 25, 1905.
Assignment of Errors filed Dec., 6, 1905.

Said transcript to be prepared as required by law and the rules of this court and the rules of the Supreme Court of the United States, and on file in the office of the clerk of the Supreme Court at Washington, D. C. before December 25, 1905.

WM. E. MASON,
For GEORGE W. FELTS.

(Endorsed:) Filed Dec., 18, 1905, Marshall E. Samsell, Clerk.

NORTHERN DISTRICT OF ILLINOIS, *Eastern Division, ss:*

I, Marshall E. Sampsell, Clerk of the Circuit Court of the United States, for said Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said Court and made in accordance with Præcipe filed in cause entitled People of the State of Illinois *ex Rel.* George W. Felts *vs.* E. J. Murphy, Warden of the Illinois State Penitentiary at Joliet *is* respondent, as the same appears from the original Files and Records thereof now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said District, this 18th day of December A. D. 1905.

[Seal Circuit Court U. S., Northern District Illinois, 1855.]
MARSHALL E. SAMPSELL, *Clerk.*

Endorsed on cover: File No. 20,035. N. Illinois C. C. U. S. Term No. 533. George W. Felts, appellant, *vs.* E. J. Murphy, Warden of the Illinois State Penitentiary at Joliet. Filed January 3d, 1906. File No. 20,035.

FILE COPY.

Supreme Court U. S.
FILED
JAN 15 1908
JAMES H. McKENNEY
Clerk

533.

IN THE

SUPREME COURT OF THE UNITED STATES.

PEOPLE OF THE STATE OF ILLINOIS, ex rel. GEORGE W. FELTS

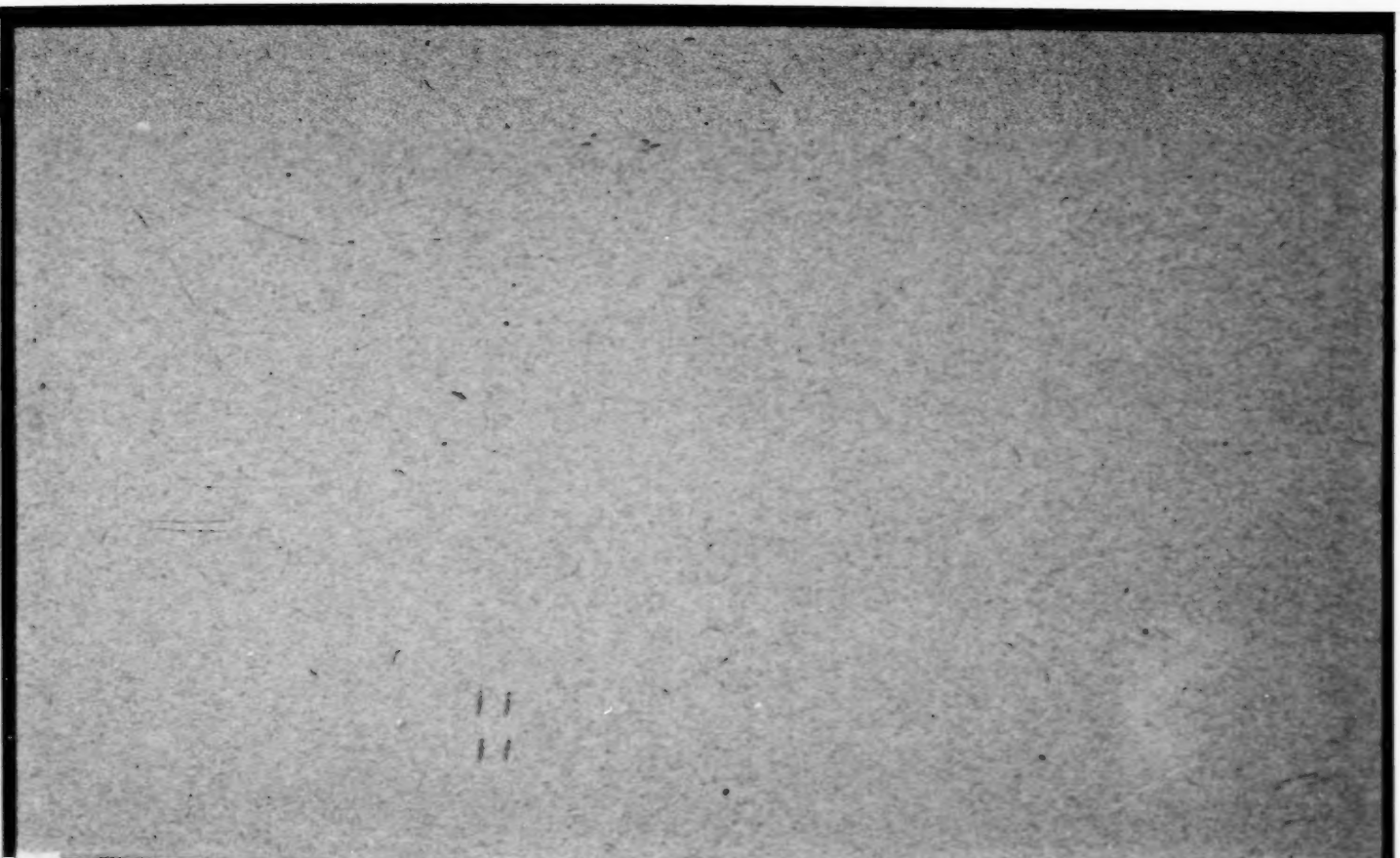
vs.

R. J. MURPHY, Warden of the State Penitentiary at Joliet, Illinois.

STATEMENT AND AFFIDAVITS IN SUPPORT OF MOTION FOR AN EARLY HEARING.

WILLIAM E. MASON,
ATTORNEY FOR RELATOR.

BARNARD & MILLER, PRINTERS, CHICAGO



IN THE

Supreme Court of the United States.

PEOPLE OF THE STATE OF ILLINOIS, ex rel. GEORGE W. FELTS

vs.

E. J. MURPHY, Warden of the State Penitentiary at Joliet, Illinois.

STATEMENT AND AFFIDAVIT IN SUPPORT OF MOTION FOR AN EARLY HEARING.

George W. Felts, the relator in the original petition for habeas corpus, is totally deaf, but with the aid of an ear trumpet, under some conditions, can carry on a conversation.

He was tried in the Circuit Court of Winnebago County, State of Illinois, and found guilty of murder and sentenced to life imprisonment, without hearing a single word of the examination of the jurors, and without hearing a single word of the evidence of any of the witnesses who testified against him, and without having any part of said trial communicated to him in any way, except this: After the verdict was rendered, the clerk of the court wrote out for him the statement that the verdict was "guilty," and after the motion for a new trial had been argued, the court sentenced him, remarking at

the time: "It is regretted in one sense that the defendant, on account of his infirmity, is unable to know clearly what has been done. He should be informed, I suppose, of the fact that his motion for a new trial has been overruled. Mr. Sheriff, will you bring Mr. Felts forward?" * * * "Well, under the circumstances, of course, it is impossible for me to say anything to this defendant." Here follows the sentence of the court, which sentence was transmitted to the defendant by the sheriff through a tube. (Certified by the official reporter.)

Mr. Felts is past 63 years of age. He was a soldier during the Civil War and has received a pension from the Government of the United States for total deafness in one ear and severe deafness in the other for twenty (20) years. This deafness was caused by military service, while in line of duty. He is also, as shown by the physician's certificate, in poor health, suffering with heart trouble, and unless his case can be heard and disposed of, in the opinion of the undersigned, there is grave danger that he may not live to have a hearing of this case. Mr. Felts is entirely without means and has no income except his pension, and a motion is now pending in the Pension Department to take that away from him, which is likely to be done, at any time, under the statutes of the United States providing for a diversion of the pension of a person convicted of felony.

He has been confined in the penitentiary for one year. He was unable to take an appeal or writ of error from the judgment of the Winnebago Circuit Court for the reason that it would require about $800 to pay the reporter for transcribing the evi-

dence for a bill of exceptions, which would be necessary in case it was taken to the Supreme Court of the State of Illinois either by appeal or writ of error, and the time for appeal has long since passed. The following efforts have been made to release him upon a writ of *habeas corpus:*

Application was made before Judge Sanborn of the United States Circuit Court, the petition not being actually filed, the court advising that it be not filed and that application should be made first to the state court. Thereupon, application was made to Judge Honore, one of the judges of the Circuit Court of Cook County, who decided in substance that, while Mr. Felts had been deprived of the constitutional right in his trial, yet the indictment was still pending even though the judgment of the court was void. It was then presented to other judges of the Circuit Court and Superior Court, all to whom it was presented, declining to hear it on the ground that it had been once heard by Judge Honore.

A direct effort was then made to the Supreme Court of the State of Illinois, which court, under its rule, declined to permit the filing of a petition, but only gives permission to leave the petition with the clerk of the court, permitting no argument or brief in its behalf, and then to present a written motion for leave to file a petition for a writ of *habeas corpus.* A written motion for leave to file the petition was filed and no argument was permitted in its behalf. On the day following its receipt, they overruled the motion for leave to file the petition and filed a short opinion (see record.), showing that they wholly misunderstood the facts and were wholly un-

advised as to the questions of law. The questions of law are not new, yet the occasion for presenting the same not being frequent, the court, in the opinion of the undersigned, was wholly in error as to the law of the case.

In view of the physical and financial condition of the relator and in view of the fact that the petition itself had never been filed and made a part of the record in the Supreme Court of the State of Illinois, the undersigned thought the fairest, most practical and most economical way to get to the Supreme Court of the United States was to file the petition in the Circuit Court of the United States, and the same was heard before his Honor Judge Landis. The relator not being able to employ a stenographer, is not able to give the opinion of Judge Landis in full; a synopsis will be printed in the brief.

His Honor Judge Landis, however, decided in substance to deny the writ and cited the case of *Maxwell* v. *Dow,* and the Hurtado case therein cited; also the case of *Leeper* v. *Texas,* where the question was as to the right of the state to try by eight instead of twelve jurors.

His Honor also bases his opinion upon the case of *The State of New Jersey* v. *Bergmann,* where this court, in the opinion delivered by Mr. Justice Harlan, refuses the writ of *habeas corpus,* although it was alleged that the indictment against the relator charged the crime of murder in the second degree and not murder in the first degree; that he was not informed of the crime of murder in the first degree by any indictment, and this court held that inasmuch as the New Jersey legislature had provided by stat-

utes that it would not be necessary to set forth the manner or the means by which the death of the deceased was caused; that there had been no violation of the relator's constitutional rights and that there were no grounds for the contention that the laws of New Jersey prescribing the form of indictments were inconsistent with due process of law.

The undersigned believes that he can satisfy this Honorable Court that in the trial the relator, Felts, did not receive a jury trial as established by common law before the adoption of our Constitution and in uniform practice since that time; therefore, the judgment is void, and that the indictment having merged into the judgment, falls with the judgment, and that, therefore, he was not convicted by due process of law.

I respectfully state, also, that I believe he was not granted the immunities and privileges granted to other citizens in this, that his constitutional right to hear what was said at the trial has never been determined by any court, it not having been raised in the trial court by reason of the fact that the prisoner was not advised as to his constitutional rights, and that that constitutional right never having been determined, he is entitled to have it determined without being compelled to pay $800 or any other sum of money to perfect an appeal or writ of error under the rules of the Supreme Court of the State of Illinois, and that that uniformity of legal procedure provided for in the Constitution was violated when such rules were adopted as would permit a man of means to have his constitutional rights determined upon the payment of a large sum of money and re-

fuses another citizen the same right to have a constitutional question heard and determined who has not the means to pay the expenses of writing up the evidence for a bill of exceptions.

The basis, however, for immediate hearing is that I verily believe an innocent man is confined in the penitentiary and has been confined without due process of law. His financial condition being such as to make him unable to appeal upon mere questions of error, and he is, therefore, obliged to get relief under a petition for a writ of *habeas corpus,* and a further and most moving fact for a speedy trial is the physical condition of the relator and the danger of his never having a hearing of this case unless it is heard by the advancement of this case.

WM. E. MASON,
Attorney for Relator.

IN THE SUPREME COURT OF THE UNITED STATES.

People of the State of Illinois, *ex rel.* George W. Felts,
vs.
E. J. Murphy, Warden of the State Penitentiary at Joliet, Illinois.

MATILDA FLETCHER WISEMAN, being first duly sworn, on oath states that she is the sister of the relator, George W. Felts, who is now confined in the State Penitentiary at Joliet, Illinois. She has visited him on several occasions since his confinement and that on her last visit his hearing was so bad that it was impossible to communicate with him at all except in writing; that for many years it has been impossible to communicate with him except through an ear trumpet and then by speaking directly into the mouthpiece of the ear trumpet, and even under the most favorable circumstances communication with him is difficult; that she has consulted with the physician in charge of said institution in regard to his health.

Affiant further states that she can observe that her said brother, George W. Felts, is in a worse condition than he was at the time of the beginning of his confinement, and she verily believes his confinement has seriously impaired his health. His health was never robust since he came home from the army, and she is informed by her said brother that frequently his heart trouble is so bad that he is obliged to sit up most of the night, and this affiant verily be-

lieves that the said George W. Felts will not long survive if the confinement is continued.

MATILDA FLETCHER WISEMAN.

Subscribed and sworn to before me this 10th day of January, 1906.

THOMAS H. ROBINSON,
Notary Public.

[SEAL.]

IN THE SUPREME COURT OF THE UNITED STATES.

People of the State of Illinois *ex rel.* George W. Felts
vs.
E. J. Murphy, Warden of the State Penitentiary at Joliet, Illinois.

W. A. Wiseman, being first duly sworn, on oath deposes and says that he visited George W. Felts in the prison at Joliet, Illinois, yesterday, January 10, A. D. 1906.

Affiant further states that the said relator's health is declining, and that he suffers from heart trouble, stomach trouble and rheumatism. Affiant further states that he does not believe that the said George W. Felts could live long under present conditions.

W. A. WISEMAN.

Subscribed and sworn to before me this 11th day of January, 1906.

[SEAL.]

THOMAS H. ROBINSON,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

People of the State of Illinois *ex rel.* George W. Felts
vs.
E. J. Murphy, Warden of the State Penitentiary at Joliet, Illinois.

October Term.
No. 533.

To the Attorney General of the State of Illinois:

PLEASE TAKE NOTICE that I will ask the court on Monday, January 15, 1906, to set down the above entitled cause for an early hearing.

WM. E. MASON,
Attorney for George W. Felts.

Received a copy of the above notice this 8th day of January, 1906.

W. H. STEAD,
Attorney General State of Illinois.

IN THE SUPREME COURT OF THE UNITED STATES.

People of the State of Illinois *ex rel.* George W. Felts
vs.
E. J. Murphy, Warden of the State Penitentiary at Joliet, Illinois.

October Term.
No. 533.

STIPULATION.

It is stipulated by and between the parties hereto that the above entitled cause may be set for an early day for hearing that may suit the convenience of this Honorable Court.

WM. E. MASON,
Attorney for George W. Felts.
W. H. STEAD,
Attorney General of the State of Illinois.

FILE COPY.

Office Supreme Court U. S.
FILED
JAN 15 1906
JAMES H. MCKENNEY,
Clerk.

No. 533.

IN THE

Supreme Court of the United States

Petition for Writ of Habeas Corpus.

PEOPLE OF THE STATE OF ILLINOIS EX REL.
GEORGE W. FELTS,

vs.

E. J. MURPHY, WARDEN OF THE STATE PENITENTIARY AT JOLIET, ILLINOIS.

Statement of Facts and Brief for Relator.

W. E. MASON,
Attorney for Relator.

CHAMPLIN LAW PRINTING CO.

IN THE

Supreme Court of the United States

Petition for Writ of Habeas Corpus.

PEOPLE OF THE STATE OF ILLINOIS EX REL.
GEORGE W. FELTS,

vs.

E. J. MURPHY, WARDEN OF THE STATE PENITENTIARY AT JOLIET, ILLINOIS.

Statement of Facts and Brief for Relator.

The relator, George W. Felts, a citizen of the United States, is a deaf man, being unable to hear excepting through an ear trumpet, and then only when the person speaking to him places his mouth in close proximity to the trumpet. He was a soldier of the Civil War, and his only income or property is a small pension which he receives from the government of the United States, given to him on the ground of deafness, which misfortune he incurred in line of duty during the War of the Rebellion.

While walking along the streets on a dark night he was assaulted, and though the evidence afterward developed, that it was done in rough sport, he thought he was the victim of a hold-up and reached back of him with his small pocket knife and inflicted a wound from which his assailant died. He was thereafter arrested and went through the form of a preliminary hearing, during which preli minary hearing no word of the evidence was ever transmitted

to him, either through his trumpet or by writing or printing, and he was absolutely ignorant of what transpired at the preliminary hearing until told thereafter, through his ear tube, that he had been bound over, and he was confined in the county jail in Winnebago county for a period of six months. He was thereafter indicted, and on the trial of his case he did not hear a single word that was said by his own counsel or by the opposing counsel during the entire examination of the jury, and had no communication during the progress of the examination with any one which would enable him to act intelligently upon the question of the accepting or rejecting of jurors.

His case was tried before the Circuit Court and the jury selected, as I have before stated, and the trial lasted about two weeks. He had in his possession at the time of the trial and all during the trial his ear trumpet which he wore around his neck, but which was not available to him for the purpose of hearing, unless some one had repeated the proceedings into the mouthpiece of the ear tube. No one was appointed to do this, and as a matter of fact he did not hear anything that the witnesses testified to, who were against him in the trial of the case, and so far as his constitutional rights are concerned, he might as well have been absent from the court room during the whole trial up to the rendering of the verdict.

The jury returned a verdict of guilty, which the record shows the relator could not hear, and the judge asked the clerk of the court to write upon a piece of paper, telling the relator what the verdict was, which was the only communication he received from the time of his arrest up to the verdict as to what was being said during his preliminary examination and during his trial. Afterwards the motion for a new trial was asked by his counsel, and argued by counsel and by the state's attorney, not a word of which

was communicated to the relator and not a word of which did he hear or understand.

After the counsel on both sides had concluded their arguments, the relator saw the judge motion to him, and to the sheriff to approach the bar, and he appeared before the court and the sheriff then, placing his mouth in close proximity to mouthpiece of the ear trumpet, stated to him that his motion for a new trial had been overruled, and that the court wished to know if he had anything to say why sentence should not be pronounced against him. The relator, having after the trial read newspapers as to statements of witnesses, answered that there had been false swearing in the case, and thereupon the judge pronounced sentence, which was conveyed to the relator by the sheriff placing his mouth in close proximity to the mouthpiece of the ear trumpet informing the relator that he was sentenced for life to the penitentiary. He prayed an appeal and was allowed ninety days in which to file bill of exceptions, but the transcript of evidence alone was estimated to cost between $700 and $800, and it was, and is absolutely impossible for him to perfect his appeal or go up on a writ of error under the laws of the State of Illinois.

The petition and record presented shows that three efforts have been made for a writ of *habeas corpus*. His Honor, Judge Sanborn, of the Circuit Court of the United States, read the petition and advised friends of the relator not to file it until it had been presented to the state courts.

Application was made before the Superior Court of Cook county, and his Honor, Judge Honore, considered the petition and practically sustained the claims of the relator, but decided, in substance, that while the judgment was void that the indictment was still pending, and that it would not do to release him by writ of *habeas corpus*.

(The full text of Judge HONORE's opinion is herein set out.)

The relator then next applied to the Supreme Court of the State of Illinois, and, as is shown in the petition, his counsel, by direction of the clerk of the court, as to rules of procedure, filed a written motion asking for leave to file a petition for *habeas corpus*, and left the petition in the possession of the clerk. Motion was made on Tuesday, October 3, 1905, and on the morning of Wednesday, October 4, 1905, the motion for leave to file the petition was overruled, and the statement of the court overruling the motion for leave to file the petition is printed in full as an exhibit to the petition. The careful reading of the remarks of the Supreme Court of Illinois in overruling the motion for leave to file shows that the court was wholly misinformed as to the facts of the case, and also uninformed as to the rights of a deaf person as established by precedent in his trial, which involved his life. Indeed, we may say, with all due respect to all parties who have been interested in the case, there has been an utter want of knowledge as to the rights of this relator to hear or to know what the witnesses were saying against him in order that he might have all of his constitutional rights protected.

I venture this suggestion, that, if the presiding magistrate, at his preliminary hearing, had given him his constitutional rights, so that he could have defended himself, as provided for and specified in the constitution of the State of Illinois, and the United States, it is extremely doubtful whether he would have been bound over to await the action of the grand jury in Winnebago county, and after reading all of the record that the present counsel are able to get hold of, it is clear that the relator was utterly ignorant as to his constitutional rights, to hear or know what

the prospective jurors answered as to their qualifications as jurors, to hear what witnesses testified against him, and it is perfectly apparent that all of the counsel in the case, and his Honor who presided at the trial of his case in Winnebago county, were also uninformed as to the prisoner's constitutional rights.

The court and his counsel both recognized the great hardship of the defendant's being tried without hearing what was being testified to against him, and it is to be presumed that had they known the well-settled rule of procedure for the trial of a deaf person, they would have given him the benefit of that procedure; but the fact remains that the relator was deprived of his constitutional right to face his accusers, to see and to be seen, to hear and to be heard.

That the court felt that an injustice had been done the relator is clear from the court's own statement at the time the motion for a new trial was overruled. The statement is set up as an exhibit and shows that in court overruling the motion for a new trial, that the judge said:

> "It is regretted, in one sense, that the defendant on account of his infirmity is unable to know clearly what has been done. He should be informed, I suppose, of the fact that his motion for a new trial has been overruled.
>
> "Mr. Sheriff—Will you bring Mr. Felts Forward?"

The record printed shows that he was asked the usual questions through the ear trumpet, and then the court before sentencing Mr. Felts, said:

> "Well, under the circumstances, of course, it is practically impossible for me to say anything to this defendant."

The sentence was thereupon transmitted to the defendant by the sheriff through a tube.

(See affidavit of official stenographer.)

The points I propose to make in support of the petition for *habeas corpus*, and in support of the constitutional rights of relator I shall hereinafter cite authorities, are as follows:

1st. The relator George W. Felts was deprived of his constitutional right of being tried by due process of law.

2nd. That article 5th of the constitution was also violated, which provides that in all criminal prosecutions, the accused should enjoy the right of a speedy and public trial by an impartial jury * * * shall be informed of the nature and cause of the accusation, and to be confronted with the witnesses against him, etc.

3d. The trial was a violation of the constitution of the State of Illinois, which provides that the accused shall have the right to appear and to defend himself in person and by counsel. (The previous constitutions of Illinois did not provide that the prisoner might defend in person, but that he should be heard. The constitution of 1870, above quoted, provides that the accused should have the right to appear and defend in person.)

4th. The court, when it deprived the relator, George W. Felts, of his constitutional right, lost jurisdiction, and judgment entered thereafter was void.

5th. The relator, George W. Felts, did not by his silence, waive his constitutional right to have communicated to him the evidence of the witnesses testifying against him.

6th. The relator, George W. Felts, could not by himself or by counsel after a plea of not guilty, waive his constitutional right to have communicated to him the whole proceedings of his trial.

7th. All the proceedings after the arrest of the relator, including the preliminary hearing, trial, verdict and sentence all merged into the judgment of the court, and all must stand or fall with the judgment.

As to the first proposition, I respectfully submit that the court is familiar with the Federal constitution and the decisions. The constitution of the State of Illinois provides that "no person shall be deprived of life, liberty or property without due process of law." Section 5 provides that "the right of trial by jury as heretofore enjoyed shall remain inviolate."

Section 9 provides that "the accused shall have the right to appear and defend in person and by counsel to meet the witnesses face to face," etc.

Section 7 provides that "the writ of *habeas corpus* shall not be suspended unless in case of rebellion or invasion."

Section 19 provides that "every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation. He ought to obtain by law, right and justice freely."

By the constitution of the state as well as by the Federal constitutional, the common-law right to a trial by jury in criminal cases is guaranteed, and "all trials for criminal offences should be conducted according to the courts of the common law."

Harris vs. *The People of the State of Illinois*, 128 Ill., p. 585.

The first inquiry that naturally arises is what is common law right of trial by jury for a man who is suffering with the infirmity of deafness? The rules of procedure at common law in such a case have long been established, (see Hale's Pleas of the Crown, volume 1, p. 34), which is followed by the practice since that decision (see *State* vs. *Wm. Harris*, 53 North Carolina reports or volume 8 of Jones' Law of North Carolina; Vol. VIII., 28th page; Jones' Law, North Carolina, Vol. 53, p. 136, N. C.)

This was a preliminary issue on a case for murder, tried before Judge Bailey at the spring term, 1860, of Granville Superior Court.

Defendant was indicted for murder, and upon his arraignment it was suggested that the prisoner was mute by the visitation of God, having been deaf and dumb from birth. The fact was admitted by the counsel for the state, who moved the court to direct the clerk to enter a plea of not guilty, and that the trial should proceed upon that issue.

The court refused the motion of the solicitor for the state, and ordered that a jury inquire,

1st. Whether the prisoner, Wm. Harris, is able to plead to the indictment against him.

2d. Whether the said prisoner, Wm. Harris, is sane or not.

On the trial of these issues witnesses were called.

They testified that he was a man of intelligence and somewhat skillful as a mechanic and ingenious in hunting and in making traps, etc., and that he had also made intelligent and useful suggestions to millwrights when engaged in the mechanical work of their trade, and one of the witnesses testified, that had the prisoner been educated. he would have made one of the first mechanic's in the country. Witnesses also testified that he was a sensible person who knew right from wrong, and that he knew it was wrong to take the life of another person. He had often indicated by a sign to indicate putting to death by hanging, which he often signified would be inflicted on a person who should kill another

He was a man of violent temper, and for some time had seemed to be angry at the deceased, and had threatened to kill him, and had been remonstrated with for it. He carried a gun even when he went to his meals. He came in

very angry, and threatened by signs to kill the deceased, who was warned by his wife, but he came into the room and was immediately shot and killed.

That the prisoner knew he had done wrong, was shown by his staying away from his meals for a day. The next day he came in and was taken prisoner.

These witnesses also severally testified that they believed that the prisoner knew that he was in court because of having killed Richard Fowler; when asked whether they could, any of them, make him understand the contents of the bill of indictment, some of them thought he could, but no one professed to be able to communicate them to him, others doubted his ability to understand this, and no one of them supposed that it could be communicated to him *that* he *had* the *right* of *challenge* allowed by law, and that he could be made to comprehend the *testimony* of the *witnesses* and *cross-examine* or *contradict* them.

The prisoner's counsel also called several witnesses who testified that the prisoner had never been educated in any school of deaf mutes. The witnesses, with the exception of two, stated, that they believed that he knew right from wrong, and that it was wrong to kill deceased.

Mr. Cooke, principle of asylum for deaf and dumb, testified that he had endeavored to communicate with the prisoner by natural signs, and found him capable of narrating occurences that he had witnessed, but that it was his opinion that he could not be made to comprehend the indictment, or his rights of challenge, or cross-examination. The jury found in favor of the defendant.

Whereupon the court, reciting that it appeared to him that the said Harris was incapable of being brought to trial, ordered that this finding of the jury should be certi-

fied to the Court of Granville county to the end that provision should be made for him in an asylum or otherwise, according to law. To the order of the court in favor of the prisoner the state solicitor appealed to the Supreme Court.

Decision of Supreme Court delivered by Justice BATTLE:

> "The proceedings in this case are a novelty in the administration of criminal justice in this state, and but for the light which is thrown upon them by some recent decisions in that country from which our common law is derived, we might find a difficulty in dealing with them."

In *Rex* vs. *Dyson*, which is reported in 2 Lewin's Criminal cas., 64, and also in a note to *Rex* vs. *Pritchard*, 32 English Common Law Rep., 518, the prisoner was indicted for the murder of her bastard child by cutting off its head. She stood mute and a jury was empaneled to try whether she did so by malice or by the visitation of God, and evidences having been given that she had alway been deaf and dumb, the jury found that she stood mute by the visitation of God.

Then a witness was found who thought he could communicate with her by signs and could give her answers in the same way.

The witness was then sworn as follows:

"You swear you will well and truly interpret, and make known to the prisoner at the bar, by such signs, ways and methods, as shall be best known to you the indictment with which she stands charged, and also all such matters and things as the court shall require to be made known to her, and also well and truly interpret to the court the plea of the prisoner to the indictment, and all answers of the said prisoner to the said matters and things so required to be

made known to her according to the best of your skill and understanding. So help you God."

He explained by signs what she was charged with. She by signs made denial. The judge directed a plea of not guilty. Then they undertook to explain to her that she might object to any juror, etc., but he and another witness stated that they could not make her understand the nature of such a matter. A jury was then empaneled to try her capacity, and they found that she was incapable of understanding the mode of a trial, etc., or to conduct her defense.

The judge, in charging the jury to try her capacity, referred to Lord HALE in his Pleas of the Crown, Vol. 1, page 34, quoting as follows:

> "If a man, in his sound memory, commits a capital offense and before his arraignment becomes mad, he ought not by law to be arranged during his frenzy, because he can not advisedly plead to the indictment, etc., but in such cases a judge shall empanel a jury touching such insanity, whether it is real or counterfeit."

The judge then told the jury that if they were satisfied that the prisoner had not then from the *defect* of her faculties the capacity to understand the nature of the proceeding against her, that they ought to find her not sane, which they accordingly did.

A similar case occurred afterward before Baron Alderson (see *Rex* vs. *Pritchard*, 7 Cas. & Payne, 303; 32 Eng. C. L. Rep., 517), where he referred to *Rex* vs. *Dyson*, and said the course which Mr. Justice Parker had pursued had been approved by several of the judges, and that he should follow it. He accordingly had a jury empaneled, and told them that there were three points to be inquired into:

1st. Whether the prisoner is mute of malice or not?

2d. Whether he can plead to the indictment or not?

3d. Whether he is of sufficient intellect to comprehend the course of the proceedings on the trial, so as to make a proper defense. To *know* that he may challenge any one of you to whom he may object, and to comprehend the details of the evidence which in a case of this nature must constitute a minute investigation. Before this issue, therefore, if you think there is no certain mode of communicating the *details* of the trial to the prisoner so that he can *clearly* understand them and be able, properly, to make his defense to the charge, you ought to find that ne is not of sane mind. It is not enough that he may have a general capacity of communicating on ordinary matters. The jury returned a verdict that he was not capable of taking his trial.

Justice BATTLE then said:

"We have stated these cases with more than usual particularity because they set forth clearly the true grounds on which a deaf and dumb person, whose faculties have not been improved by education, and who in consequence thereof can not be made to understand the nature and incidents of a trial, ought not to be compelled to go through what must be to him the useless forms of such a trial.

"Whether arising from *physical defect*, or mental disorder, he must under such circumstances be deemed not sane, and of course according to the great authority of Lord Hale, he ought not to be tried.

"The allowance to prisoners in this state, the full benefit of counsel, in everything connected with their trial, has not been deemed sufficient to change the law, as to one mentally insane, and we think it can not have that effect in a case, like the present, of a de-

fect of the physical faculties. The proceedings in the present case, including the instructions given to the jury by the presiding judge, are substanially the same as those in the English cases to which we have referred, and we now declare our approbation of them."

Judgment affirmed.

I have set out this case at considerable length to show that under the common law there can be no trial unless the defendant is permitted to know and understand the nature and purpose of the trial, and that he could not have his common law rights and what were clearly his constitutional rights unless he could hear or have communicated to him in some proper way the evidence of witnesses, examination of jurors, and all of the details of that trial.

As to the second proposition, I respectfully submit that under the showing by the petition and affidavits that the relator never had any trial as contemplated by the article of the constitution cited.

In regard to the third proposition, I respectfully submit that at no time or place was the relator permitted to defend himself *in person*, and that the failure to communicate to him the details of the trial as it proceeded, was a denial of that right under the constitution. The true plan of procedure in the case tried against the relator in the Winnebago Circuit Court would have been to have handed him the indictment with the usual questions written on paper, and he should have been then requested to plead either verbally or in writing. The juror's name should have heen given to him and he should have been permitted to have heard their answers to all questions touching their qualifications as jurors.

Thompson's case, 2 Lewin, 137.

In the case of James Berry, Foxe's Criminal Law, Volume 13, page 189, says:

> "There were no means of making the prisoner acquainted with a single word that had been spoken or anything that had been done, and where that clearly appears in the course of the trial, it is the duty of the judge to discharge the jury or direct an acquittal."

In the case at bar, the relator was asked by means of an ear trumpet whether he could hear and he expressly stated that he had not heard any of the testimony, yet the court allowed the trial to proceed.

4th. In the case of *Brown* vs. *State*, 38 Texas Reports, page 485, the court says:

> "The accused should not only be within the walls of the courthouse, but should be present where the trial is conducted that he may see and be seen, hear and be heard under such regulations as the law has established."

In the case of *The People* vs. *McKay*, 18 John's Report, page 212, the court says:

> "It is a humane principle applicable to criminal cases, and especially when life is in question, to consider that the prisoner is standing on all of his rights, waiving nothing on the score of irregularity."

But even if the defendant in that case (the relator in this case) had by himself or counsel at any time attempted to waive his constitutional rights to hear what was being said either by counsel, court, jurors or witnesses, it would still leave the judgment void.

In the case of *Nancy Harris* vs. *The People of the State of Illinois*, 128 Ill., page 585, the defendant charged with a felony entered a plea of not guilty and consented to a waiving of a jury and trial by the court. She was tried and

convicted by the court. The Supreme Court held that the trial by the judge was nugatory and void, and that in the absence of a jury the court had no jurisdiction, and that the defendant could not confirm jurisdiction by consenting.

If a person charged with crime can not waive a constitutional protection in order to surrender any of his constitutional rights after a plea of not guilty, how much stronger would be the proposition that a defendant charged with a crime can not, by reason of his ignorance as to his constitutional rights, who sits silent during his trial, be deprived of his rights to be present to face the witnesses, to see and to be seen, to hear and to be heard. In the case of *Ex parte* Uhlrich, Federal Reports, volume, 42, page 587. "If any "fundamental right is denied, the person has not been tried "by due process of law, and the proceedings are null and void." It has been held in numberless cases that if the accused was absent during any of the proceedings the judgment was void, and that even though the prisoner's counsel was present and did not object and did not call the attention of the court to the fact that the prisoner was absent, yet even that was not a waiver of the rights of the prisoner to be present. 43 New York, page 1. Opinion of Justice GROVER.

2 Smed (Verm.) 550

Samuel *Andrews* vs. *The State*, ~~29 Missouri, p. 132.~~

In re Neilson, 131 United States, p. 183:

> "Under this rule, if a court errs in assuming jurisdiction which it does not possess, or in interpreting a constitutional immunity or right secured thereby against a prisoner, or in refusing him a constitutional right, the jurisdiction over him ceases and his acts are not simply erroneous, but void. Therefore, it may be laid down as a rule of law that the error of a court in considering any constitutional immunity or right in a criminal case against the accused is as fatal to the

judgment as assuming jurisdiction originally where the court had none."

In the case of *Hopt* vs. *Utah*, Supreme Court of the United States, Vol. 110, page 579, this seems to me a case directly in point with the case at bar. In that case, several of the jurors were taken into another room to be questioned and the defendant did not hear or know what they said, and did not know what that part of the proceedings were. The judgment was declared null and void, and as Mr. Justice HARLAN, who delivered the opinion, said:

"It is essential to the protection of one when life or liberty involves in the prosecution for felony that he shall be personally present at the trial, that is at every stage of the trial when his substantial rights may be effected by the proceedings against him."

In that case the prisoner was present; he saw and heard all or nearly all of the proceedings against him, but he did not hear a part of the examination of the jurors. In the case at bar the relator, George W. Felt, was present and saw the jury and witnesses, but did not hear a single part of the proceedings from the beginning to the end of the trial as hereinbefore shown.

W. E. MASON,

Solicitor for Relator.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905.

No. 533.

GEORGE W. FELTS, APPELLANT,

vs.

E. J. MURPHY, WARDEN OF THE ILLINOIS STATE PENITENTIARY AT JOLIET.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

Additional and Reply Brief for George W. Felts, Appellant.

Additional and Reply Brief.

There is no controversy as to the facts as set up in the petition. The answer of Warden Murphy sets up the mittimus, which operates as a general demurrer.

The facts are that Felts was convicted and sentenced for life, without having heard one word of the examination of the jurors, or one word of the evidence given against him. The only part of the proceedings of which hewas advised was, the verdict was written out for him and his sentence was given by the sheriff, through his ear trumpet.

Common law right to be Present, Confront the witnesses, etc.

I respectfully claim that this was a denial of due process of law, and deprived him of his liberty without due process of law as prescribed by the Common law and adopted by the State of Illinois ; and, secondly, that it deprived him of the privileges and immunities granted to others in this: 1st. Every other citizen in his condition was given the common law right to hear the examination of jurors and witnesses against him. 2d. That the only way he could appeal or get a review in the State Supreme Court by writ of error, was to pay $800 necessary to write up the evidence for Bill of Exceptions, which he was and is absolutely unable to do.

Whereas, any other citizen possessed of $800, could get a hearing on his Constitutional right and all other questions.

I do not claim any Constitutional right of appeal on mere error, but do claim that when the Constitution provided for certain rights, it raised the presumption that somehow, somewhere, sometime, the question of a man's Constitutional rights might be raised and determined.

That question of constitutional right never has been raised or determined in any Court of the State of Illinois and Geo. W. Felts never can raise it there, and I respectfully suggest that when a State by its statutes or the Courts of that State by its rules of practice, say to a prisoner, your Constitutional question can only be raised

on an appeal at a cost of $800, which is possible for some and impossible for others, then the laws and practice of that State lack uniformity, and limits the privileges of the poorer classes in violation of the Federal Constitution.

It may not be necessary, in this case to determine this question, for the reason that Pelts was clearly denied the right to a jury trial, but if this point is reached, I can not see how a conviction and sentence can be constitutional, under a practice that allows one class to appeal, and refuses the same thing to another class. Especially where on appeal a constitutional right is raised for the first time.

This case shows that in Illinois the moneyed class may go up on appeal, and the class without money can not, and this in face of the high sounding State Constitution.

> "Every person ought to find a certain remedy in the law for all injuries, for all wrongs he may secure, and of Judicial proceedings *according to the course of the common law.* He ought to obtain by law right and justice freely *and without being obliged to purchase it.*"

In the first brief filed we show that there was a well-established rule at common law for the trial of deaf persons. This common law rule of procedure was contained in the ordinance of 1787, for the government of the Northwestern Territory, Art. 2: "The inhabitants shall always be entitled to the benefit of the writ of *habeas corpus*, and of the trial by jury."

In Illinois Constitution of 1818, recites its admission into the general government "*consistent with the Constitution of the United States*, and the benefits of the *acts of Congress of 1787*."

Every State Constitution has provided for trial by jury as heretofore enjoyed, and the statutes of Illinois provides that trials for criminal offences shall be conducted according to the course of common law, except where statute points out a different mode.

If the Court had pursued the common law rule for proceeding before the jury in this case, it would have determined the extent of the defendant's affliction using a jury if necessary.

2d. If the defendant was able to read, the indictment should be handed to him with usual questions written upon paper.

3d. The prisoner should then plead.

4th. Then answer how he would be tried.

5th. The names of all of the jurors should be handed to him, and their answers communicated to him, and he should be asked whether he objected to them.

6th. The Judge's notes of evidence (or transcript of stenographer) should have been given to him and he should have been asked whether *he* had any questions to ask. The verdict should be written out and handed to him. That is, he should be informed of the details of the trial as it progressed.

There is no doubt the *form* of procedure might be changed, by Statute, provided the *substance* as provided

by the Constitution, is retained, but there can be no claim that the Illinois Legislature, has attempted to change this procedure *even in form*. There are two provisions in our Statute of Illinois, one provides for the Court entering a plea of not guilty where a prisoner stands maliciously—mute; and another provision for trying those who are lunatics. Neither provision applies to this case. [So that the common-law form of Jury Trial as guaranteed by the Federal Court on 14th Amendment, as to due process, provides that the proceedings must be clearly imparted, or communicated to the prisoner—particularly the examination of the jurors, and the testimony of witnesses who testify against him. Having never heard or had communicated to him the examination of the jurors, he could not ask questions and having never heard the evidence of the witnesses against him, he could not suggest cross-examination. He was entitled to be present, to "hear and be heard" and was therefore denied a Constitutional right.

Our next proposition is that, even though the Court had at the beginning of the trial, full and complete jurisdiction of the offense and the person, yet when the Court deprived the prisoner of any constitutional right it lost jurisdiction, and the judgment was void.

> "If the Court errs in * * interpreting a constitutional immunity or right secured thereby, against the prisoner, or in refusing him a constitutional right, the jurisdiction over him ceases, and his acts over him are not simply erroneous, but void."

In re Neilson, 131 U. S., p. 183, and other cases.

The warden, by his counsel contends that we seek by this writ, to have it take the place of a writ of error or appeal. We have shown why we can not take a writ of error or appeal, and insist respectfully that *having been deprived of a constitutional right, we are not limited to a writ of error, or appeal from a void judgment.* In the 20 cases cited by the Warden's or State's counsel there is not a single case where this court has refused to grant the writ of *habeas corpus*, after finding that the prisoner had been, on his trial, denied any constitutional right.

In re Lennon, 166 U. S., 552. Contempt proceedings. Petition alleged violation of constitutional rights, but this court expressly found there had been no violation of constitutional right.

In re Eckhardt, 166 U. S., 481. No constitutional right impaired. No constitutional form of indictment, and U. S. *v.* Pridgeon, 153 U. S., 48. Indian Territorial indictment.

Ried *v.* Jones, 187 U. S., 153, question of practice decided that the petition should ordinarily go to the Supreme Court of the State. Decided Ried *v.* Colorado, *ante*, 137, that no constitutional right had been violated.

Ex parte Bigelow, 113 U. S., 328.

Prisoner raised question twice in jeopordy, in trial court, was defeated. He appealed and the judgment was affirmed. Act of Congress made that judgment conclusive. This court refused *original* jurisdiction and did not decide that prisoner had been deprived of his constitutional rights.

Ex parte Belt, 159 U. S., 95. Defendant was convicted of second offence. Defendant alleged that jury was waived on first trial, and that that made second trial unconstitutional. Held that contention not sound.

Storti *v.* Massachusetts, 183 U. S., 138.

Question as to Treaty rights. Defendant, a citizen of Italy, claimed equal rights and this Court held there was nothing in the Record showing lack of equality.

Ex parte Tyler, 149 U. S., 164.

128 U. S., 289.

Petition for Writ of Habeas Corpus.

In Contempt case. No violation of Constitutional right shown.

7 Wheaton, 38, 43. A Contempt case.

Justice Story said:

"The only objection is, *not* that the Court acted beyond its jurisdiction, but that it erred in its judgment as to the law."

127 U. S., *In re* Coy.

Held the Court that sentenced defendant *had* jurisdiction, no Constitutional rights involved.

In re Schnieder.

Writ denied because application relates to an error and does not go to jurisdiction or authority.

In re Debs, 158 U. S., 365.

The Circuit Court punished for contempt.

No Constitutional question, the Court held.

3 Peters, 193.

Ex parte Watkins.

Defendant convicted.

There is no allegation in the Petition even, that the Constitutional rights had been impaired. Simply an effort to get this Court to review an *alleged error*.

110 U. S., 651.

Ex parte Tambrough.

Tambrough and others, indicted for conspiracy to intimidate voters and convicted—confined, asked for writ of *habeas corpus*. Held, this Court has no *general* authority to review an error, &c., but when a prisoner is held on a matter without the jurisdiction of that Court, then this Court should discharge the prisoner.

18 Howard, 307.

18 Wall, 163.

93 U. S., 18.

150 U. S., 637.

Swan, in contempt for carrying away liquor, in the hands of a receiver. No Constitutional rights impaired.

In re Ayers,

Scott.

McCabe.

Contempt Cases.

While the order was not subject to review by writ of error or appeal, yet when a Court "attempts to punish a man for refusing to comply with an order which that Court had no authority to make, the original order was *void*, the order punishing for contempt is *void* and if the proceedings result in *imprisonment*, this Court will discharge on writ of *habeas corpus*.

113 U. S., 713.

Ex parte Fisk.

The last case cited by the State, really sustains my contention.

Fisk was sued by Fogg to recover on *account* of false representations by Fisk in the sale of mining stock. The case removed to Circuit Court of United States and he was ordered to testify before a Master, but declined to answer on advice of counsel on the ground that the Court had no jurisdiction. He was fined and committed to custody of Marshall, but this Court discharged him on the ground that the Circuit Court was without authority to make the order for the examination of petitioner in the case and therefore without authority to enforce by contempt. **Prisoner released.**

Ex parte, Harding, 120 U. S., 782.

This Court refused to take original jurisdiction on a petition for writ of *habeas corpus*, even though it alleged that the Constitutional right of compulsory process was denied to the prisoner. The refusal was under the fol. lowing circumstances:

Montana, created by Act of Congress May, 1864. Territorial Courts were established, among them the Supreme Court of that Territory. Appeals from the Supreme Court were limited by Section 702 of the Revised Statutes of the United States, to cases where the United States Constitution, Treaty, or Statutes, were involved.

OPINION IN FULL.

Submitted March 16; Decided March 21st.

This Court has no jurisdiction for a discharge on *habeas corpus* of a person imprisoned under the sentence of a Territorial Court in a criminal case, unless the sentence exceeds the jurisdiction of that Court, and there is no authority to hold him under the sentence. Ex parte Wilson 114 U. S., 417.

The fact that a law of a Territory allowed an alien who had declared his intention to become a citizen of the United States to sit on the jury that found the indictment against the petitioner, did not deprive the Court of its Jurisdiction, for his trial under the indictment. This objection, if it be one, goes only to the regularity of the proceedings, not to the jurisdiction of the Court. The same is true of the allegation in the petition, that the petitioner was denied the right to have compulsory process for obtaining witnesses in his favor. For such errors and irregularities, if they exist, a judgment is not void, and the writ of *habeas corpus* gives this Court no authority for their correction. *Motion denied*.

This upon hasty reading seems strongly against my contentions as to the law, but it does not apply to the case at bar for several reasons:

First, when the Court stated that the refusal of "compulsory process" as guaranteed by the Article 4, of the Amendment to the Constitution, "did not deprive the Court of its jurisdiction" it could only mean that the right to refuse compulsory process was reserved to the

State or Territory, or else that "compulsory process" in Article 4 was not a part of "due process" in Montana, or it is in direct conflict with the scores of cases decided by this Court, to the effect that when a trial Court deprives a prisoner of any of his Constitutional rights, then and there the Court loses jurisdiction, and the judgment based on an unconstitutional trial, is void, and where the judgment is void, the prisoner is *not limited to an appeal*, but may ask and obtain relief under a writ of *habeas corpus*.

The opinion and intention of Chief Justice Waite is clear from the very case cited, in this opinion. The case cited was *Ex parte* Wilson, 114 U. S., 417, and sustains in its language its reasoning and its result the very proposition for which I contend. There were five particular reasons set up in the petition for *habeas corpus* only two of which went to the impairment of the Constitutional rights, and the Court held that, as to the whole five claims or reasons assigned for the writ, only one showed adeprivation of a constitutional right; *i. e.*, trial for infamous crime without indictment, and for that single impairment of constitutional right, this court held the Court "*had no jurisdiction*" and that the judgment was void, and discharged the prisoner.

It may be said that in the case last cited, the Court never had jurisdiction, and therefore the whole proceedings were void, while in the case at bar, the Court had jurisdiction. We admit the Court may have had jurisdiction at the beginning of the trial, but we feel certain that when the Court deprived him of the right to hear

the examination of jurors and evidence of witnesse against him, the Court abandoned the "due process of law," and lost jurisdiction, and its judgment, is therefore, void.

His Honor, Judge Honore, the only State Judge who ever permitted the filing of a written brief, in support of this petition, followed this Court's practice, up to the point of practically finding the judgment void, but felt embarrassed about setting aside the judgment and leaving the indictment pending. (See opinion, page 34, Record).

That Court (Judge Honore) concedes that the trial is a nullity, and the judgment and sentence is void, because the prisoner was " deprived of one of his substantial rights guaranteed to him by the Constitution," and then proceeds to leave him to life imprisonment, under a void and unconstitutional judgment, because he fears the prisoner may never be tried under the pending indictment.

The Court (Judge Honore) then cites the two cases, cited herein by the State's Attorney. Swan, 150 U S., 637, and Pridgeon, 153 U. S., 48, when an examination, as herein before stated, shows that in neither case had the prisoner been deprived of a constitutional right.

But even if the rule should be changed so that a prisoner, deprived of his Constitutional rights, must ordinarily be limited to appeal or writ of error, yet that rule would not apply here, without an absolute denial of even a hearing on his Constitutional rights, for the

record shows, that the prisoner is unable to comply with the rules of the Court of Illinois, and pay seven or eight hundred dollars for a bill of exceptions, which is necessary to get a hearing in the Supreme Court of Illinois.

If this Court thinks we should or could go on some short record in the Supreme Court of Illinois, we answer we have been there; and this is practically appeal from that Court as well as from the United States Circuit Court (see Record).

His Honor, Judge Landes, makes what seems to me the same error. His Honor refused to grant the writ in this case, quoting principally the case of Bergeman *vs.* New Jersey, 157 U. S., 655, opinion by Justice Harlan. In that case, the Legislature prescribed the *form* of indictment, and this Court held that the Statute which fixed the form of the indictment was not repugnant to the Constitution, because indictment proceedings only guaranteed the trial in United States Courts and the State had power to legislate.

Suppose in the case at bar the Illinois Legislature had passed an Act for the trial of prisoners who were deaf, which, in affirmative terms, prohibited the prisoner from hearing the examination of jurors and the witnesses who testified against him and providing that the only thing necessary for the prisoner to hear would be the verdict and sentence. Clearly such act would violate the fourteenth Amendment as to "due process" and also because denying "equal protection."

On the contrary, the Constitution and laws of Illinois provide for the adoption of the common law, which prescribe affirmatively, that a deaf person should have communicated to him, the examination of jurors, etc., and no statute in Illinois has been passed abridging the common law right of a deaf prisoner to have the examination of jurors and witnesses translated to him, and the practice of that State is to follow that common law right. A deaf and dumb man tried and convicted and sentenced, before Judge McEwing, within the year, had upon the suggestion of the Court, not only the indictment translated to him, but through an interpreter had the examination of jurors and all witnesses interpreted to him.

So that the treatment of Felts, in not giving him that trial, not only violated the laws of Illinois, and the practice of its courts, but is totally repugnant to the fourteenth Amendment to the Constitution, which provides for "due process" and "equal protection."

In the Bergeman case, cited by Judge Landis, the question of indictment was wholly within the power of the State. It is one of those powers which by construction of this Court is left to the States, whereas, the amendment under which we claim relief, is a limitation addressed and applicable *to the States*.

The same as to Maxwell *vs.* Dow, 176 U. S., 581, cited by his honor, Judge Landis. In that case the act of the State Court complained of, that the defendant was tried by eight jurors, and he was proceeded against by information, and not by indictment, in both of which matters

this Court held that the State of Utah had power to provide, as it did, by its Constitution, for the prosecution by information instead of indictment, and that the jury (except in capital cases) "shall consist of eight jurors."

Also that, as the Articles of the Federal Constitution did not prohibit the States from so doing, the Constitution of Utah was not in violation of the 14th Amendment.

In the case at bar, there is no claim that the Illinois Constitution or Legislature has ever attempted to deprive a deaf person, tried for crime, from the Common Law right to hear the examination of jurors and witnesses. The contrary is true. That State provides in its Constitution for such Common Law right, and the Courts of that State, always give a deaf prisoner that right, the only exception that I have ever heard of is the case at bar, and pardon repetition, in this case, the prisoner was deprived of one of the "natural rights of man" he was deprived of one of the rights granted to others by the laws and practice of Illinois, and therefore deprived of "due process" and "equal protection of the laws."

In Hurtado *vs.* California, 110 U. S. 517, cited by Judge Landis, is to the same effect as the case last cited. The constitution of California provided for "Information" in place of "Indictment," and this Court held, as above, that the provisions in the Federal Constitution providing for indictment did not prohibit the States from dispensing with indictment. Suppose California had not provided for proceedings by information, and had provided for "indictment" in its constitution

and laws, and followed that practice in its courts in all cases, except the case cited? Would there be any doubt in the mind of this Court, that such proceedings were without "due process," and also a deprivation of "equal protection of the laws." In the case last cited, the Court quotes from Justice Curtis' opinion, Murry *vs.* Hoboken, 18 Howard, 272, as to how to ascertain what "due process of law" is:

> "The answer must be two-fold. We must examine the Constitution itself to see if this process with any of its provisions. If not found to be so, we must look to those settled usages and modes of proceedings existing in the common law of England," &c.

In the case Markuson *vs.* Boucher cited, 175 U. S., p. 184, the petitioner *alleged* a deprivation of Constitutional rights, but alleged no fact in the petition which showed a violation of Constitutional rights. The petition complained in several particulars: But allege and show that the prisoner's conviction was under the *Revised Statues of the State*, and related to matters in which the State had the right to establish procedure under the former decisions of this Court.

In other words, the Court proceed under a statue which permitted information, instead of indictment, and that if the Statute "operated" to deprive persons of "due process" in providing for conviction in contempt cases without a jury.

The allegation of the petition shows that his conviction *was by due process*, as established by the State; whereas, in the case at bar, we allege and show that *due*

process in Illinois is the *common law process*. That it is made so by the Constitution and Statutes of Illinois, and when the Constitution provides that all criminal cases should be tried by the rule of common law proceedings, except when limited by statute, and there being no statutory rule for the trial of a person who is deaf, it is the same as saying all deaf persons shall be tried when charged with a crime by the rules and proceedings of the common law.

The suggestion of referring this prisoner again to the Supreme Court of Illinois is most shocking to a true sense of justice, not only because the prisoner can not go up on a writ of error on account of its expense, but *also* because that Court has already held that the facts set up in this petition "do not furnish sufficient reason for reversal." They not only denied the writ, but answered that to deprive a man from hearing the examination of jurors and witnesses against him was not even error sufficient to grant a new trial, and if the Court should imagine that we might, under the Common Law practice, raise this, our point, in that way, we respectfully answer that we did do so in our application, and it would be a denial of justice to send us back to a Court on our point, that point having been already decided.

There is no appeal allowed in this case from the Winnebago Circuit Court. If it goes to the Supreme Court of Illinois, it must go on a writ of error. French *vs.* Illinois, 77 Ill., 531.

To secure a writ of error, defendant must have a Bill of Exceptions, signed by the Court, tendered to the Court "during the progress of the trial." In the case at bar, I am informed that he was given ninety days to prepare that Bill of Exceptions, which has long since passed.

The prisoner being without means, no Bill of Exceptions could be made.

The following is the Illinois Statute governing the case: Sec. 197, Revised Statutes of 1845.

> "In the trial of any person for any crime or misdemeanor, it shall be the duty of the Judge before whom such trial is pending, to sign and seal any Bill of Exceptions tendered to the Court, during the progress thereof; Provided the truth of the case be fairly stated in such Bill of Exceptions."

It is a physical impossibility to make this bill of exceptions, without a transcript of the evidence, which will cost above seven hundred dollars. And as I now read the statute, the time for the bill of exceptions, having passed (through the misfortune of the prisoner) I do not see how a bill of exceptions can be presented to the Supreme Court of Illinois, which will be necessary as a basis for the writ of error, even though he was able to get some charitably disposed person to give him the money to purchase the stenographer's transcript.

WILLIAM E. MASON,
For Geo. E. Felts, Relator.

IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, A. D. 1905

Supreme Court, U. S.
FILED
FEB 19 1906
Clerk

PEOPLE OF THE STATE OF ILLINOIS EX REL. GEORGE W. FELTS, *Appellants,*

vs.

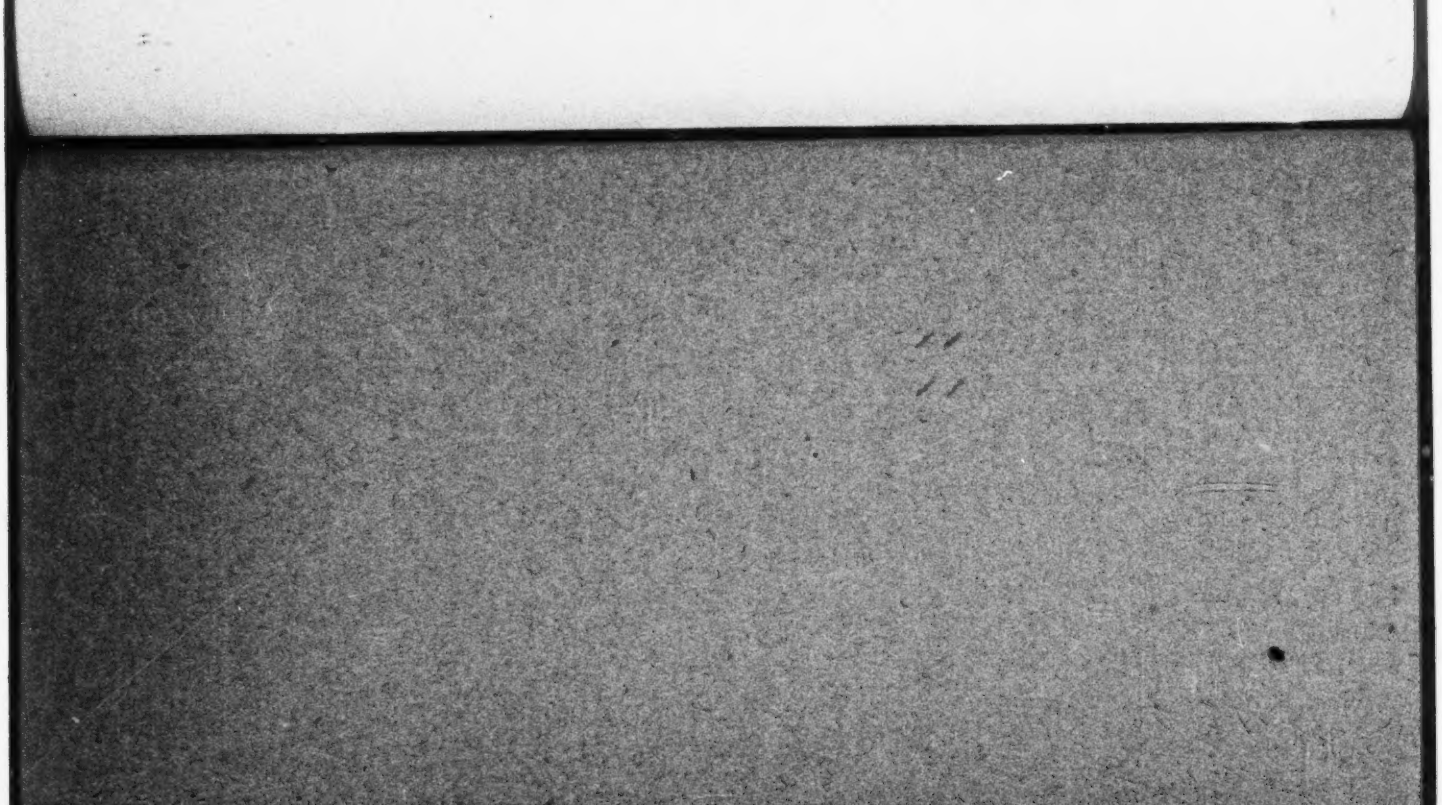
E. J. MURPHY, WARDEN OF THE STATE PENITENTIARY AT JOLIET, ILLINOIS, *Appellee.*

Appeal from the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

BRIEF AND ARGUMENT FOR APPELLEE.

WILLIAM H. STEAD, *Attorney General of Illinois,*
EDGAR ELDREDGE, *Asst. Atty. General,*
Attorneys for Appellee.

Journal Co., Printers, Springfield, Ill.



IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, A. D. 1905

PEOPLE OF THE STATE OF ILLINOIS EX REL. GEORGE W. FELTS, *Appellants,* vs. E. J. MURPHY, WARDEN OF THE STATE PENITENTIARY AT JOLIET, ILLINOIS, *Appellee.*	*Appeal from the Circuit Court of the United States, Northern District of Illinois, Eastern Division.*

BRIEF AND ARGUMENT FOR APPELLEE.

STATEMENT.

May it Please the Court:

The relator, George W. Felts, was indicted by the Grand Jury of Winnebago County, Illinois, for the crime of murder, and at the January term, A. D.

1905, of the Circuit Court of said county, he was tried upon said indictment, found guilty and sentenced to the penitentiary at Joliet for his natural life.

No writ of error was ever prosecuted by the relator to the Supreme Court of Illinois, but the relator, without attempting to get the judgment rendered on said indictment reviewed or reversed, has made several attempts to be set at liberty upon petitions for *habeas corpus* on the ground that he was so hard of hearing that he could not on the trial hear the examination of the jurors, nor the evidence which was introduced.

The trial of this case lasted about two weeks. The relator was furnished at the outset, before his plea was entered, with a copy of the indictment and a list of witnesses and jurors. He was represented on the trial by counsel. He was granted a continuance by the Court in order to better prepare for his trial. The trial was conducted in all respects as trials for criminal offenses are conducted under the laws of the State of Illinois. At no time during the progress of the trial, did the relator, or his counsel, ask or demand that the testimony on the examination of jurors or the testimony of witnesses produced on said trial,

be written out for the benefit of relator, nor was any exception taken by the relator, or his counsel, to the method of procedure adopted by the Court on the trial. The relator himself testified on his own behalf, was examined by his counsel and cross examined by the State's attorney, who prosecuted on behalf of the People. There is no contention that any of his constitutional rights were violated, except that on account of his infirmity, the Court should have ordered the testimony given by the jurors and witnesses to have been transcribed and furnished to him for his examination, on the theory that he had a constitutional right to hear the examination of the jurors and the testimony of the witnesses, which constitutional right could not be waived, notwithstanding he did not demand it on the trial.

The first application for a writ of *habeas corpus* was made before Judge SANBORN, of the Circuit Court of the United States, who refused to consider it. The next application was made before Judge HONORE, of the Circuit Court of Cook County, who denied the writ. The next application was made to the Supreme Court of the State of Illinois, who refused the relator leave to file his petition. The next application was made before Judge LANDIS, of the United States Cir-

cuit Court, who refused to grant the writ, and this cause is now in this Court on an appeal from the order of Judge LANDIS in so refusing to grant said writ.

BRIEF.

It has been too frequently decided to be now open to question that a writ of *habeas corpus* cannot be made use of to perform the functions of a writ of error or an appeal.

In re Lennon, 166 U. S., 552;
In re Eckark, 166 U. S., 481;
United States v. *Pridgeon,* 153 U. S., 48;
Reid v. *Jones,* 187 U. S., 153;
Ex parte Bigelow, 113 U. S., 328;
Ex parte Belt, 159 U. S., 95;
Storti v. *Massachusetts,* 183 U. S., 138;
Ex parte Tyler, 149 U. S., 164;
Ex parte Cuddy, 131 U. S., 280;
Ex parte Terry, 128 U. S., 289;
Ex parte Kearney, 7 Wheat., 38, 43;
In re Coy, 127 U. S., 731;
In re Schneider, 148 U. S., 162;
In re Debs, 158 U. S., 564, 600;
Ex parte Watkins, 3 Pet., 193;
Ex parte Yarborough, 110 U. S., 651;
In re Swan, 150 U. S., 637;
Ex parte Ayers, 123 U. S., 443;
Ex parte Fiske, 113 U. S., 713;

Dynes v. *Hoover,* 20 How., 81, 83;
Ex parte Reed, 100 U. S., 13;
Ex parte Parks, 93 U. S., 18;
Ornelas v. *Ruiz,* 161 U. S., 502;
Markuson v. *Boucher,* 175 U. S., 184;
New York v. *Eno,* 155 U. S., 88;
Baker v. *Grice,* 169 U. S., 284;
Bishop Criminal Procedure, sec. 1410;
Church on *Habeas Corpus,* 2d Ed., sec. 356, 363.

There is no law or justice in giving to a prisoner relief under *habeas corpus* that is equivalent to an acquittal, when on writ of error he could only have secured relief from that portion of the sentence which was void.

United States v. *Pridgeon,* 153 U. S., 48.

Mere errors, or irregularities, however gross, in the judgment, or the proceedings upon which the judgment was founded, will not be sufficient to obtain release on writ of *habeas corpus.*

15 Am. and Eng. Ency. of Law, 2d Ed., 172;
Church on *Habeas Corpus,* 2d Ed., sec. 363;
People v. *Allen,* 160 Ill., 400.

If the Court has jurisdiction of the person and of

the subject matter, the judgment cannot be inquired into in a collateral proceeding.

People v. *Murphy*, 202 Ill., 493;
People v. *Allen*, 160 Ill., 400;
Church on *Habeas Corpus*, 2d Ed., sec. 356.

Having acquired complete jurisdiction to hear, determine and adjudicate in reference to the subject matter before it, the Court did not, nor could it lose that jurisdiction by any error that may have been subsequently committed; for error intervening after the judgment attached, the judgment must be reversed in a direct proceeding on appeal or writ of error, but that cannot be urged in a collateral suit.

Herandex v. *Drake*, 81 Ill., 34;
Richard v. *People*, 81 Ill., 551;
Alman v. *Taylor*, 101 Ill., 185;
Spring v. *Kane*, 86 Ill., 580;
People v. *Murphy*, 202 Ill., 493.

ARGUMENT.

It is conceded and not questioned that the Circuit Court of Winnebago County, Illinois, had jurisdiction of the subject matter in the trial of the relator in the case in which he was convicted of murder. It is conceded and not questioned that said Circuit Court

had jurisdiction of the person of the relator in said cause. It is contended, however, that by reason of the infirmity of the relator the Court in the trial of said cause should have caused the examination of the jurors and the testimony of the witnesses to be written out and submitted to him, and because the Court failed to do so, he was not tried by *due process of law* but was deprived of his constitutional rights, and the judgment entered in said cause is *void*. There is no merit in this contention. If it be conceded, for the sake of argument, that upon the trial of a person afflicted with deafness, it is the duty of the trial Court to take such a procedure, the fact that the trial Court did not do so, would be but a mere irregularity or error, which could have been corrected upon a writ of error to the Supreme Court of Illinois. No writ of error was sued out from the Supreme Court of Illinois, and no attempt has *ever* been made to have the judgment in said cause reviewed. If the writ of *habeas corpus* is allowed, it is the same as an acquittal, or a verdict of not guilty. The contention that the trial Court lost jurisdiction of the case, or of the person of the relator upon its failure to have such testimony transcribed and delivered to him is untenable. If he had prosecuted the writ of error from

the Supreme Court of Illinois and that Court had determined that the proper procedure in the trial of a person afflicted with deafness is to have the testimony transcribed and delivered to him, the Supreme Court of that State would not have held that the trial Court had lost jurisdiction, but would have reversed the case and remanded it for another trial, to be conducted in accordance with such procedure. If, on such a writ of error to the Supreme Court of Illinois, that Court should have decided that such a procedure in transcribing the testimony was unnecessary, and should have affirmed the judgment, and if the relator had subsequently sued out a writ of error from this Court to review the judgment of the Supreme Court of Illinois upon this question, and if this Court should have been of the opinion that such a procedure was necessary, and that the judgment of the Supreme Court of Illinois was erroneous, even this Court would not discharge the prisoner, but would reverse the judgment of the Supreme Court of Illinois, and remand the case for another trial.

It is not conceded here that there was any obligation upon the trial Court to have the examination of the jurors and the testimony of the witnesses transcribed for the benefit of a defendant charged with a

criminal offense upon his trial. Suppose that the relator had been ignorant and could not read, what then would be the use of transcribing such examination and testimony? But we submit that this question has no bearing upon the question at issue in the case at bar.

If the contention of appellee is correct that the action, or rather non action, of the trial Court in the matter of having the examination of the jurors and the testimony of the witnesses transcribed, was but a mere error and irregularity, then the appellant cannot maintain his petition for a writ of *habeas corpus*.

It has been decided times without number by this Court, by the Supreme Courts of every State in this country, and by every text book, that a writ of *habeas corpus* cannot be made use of to perform the functions of a writ of error or an appeal.

This Court in the case of *In re Lennon*, 166 U. S., 552, through Mr. Justice BROWN, stated:

> "It has been too frequently decided to be now open to question that a writ of *habeas corpus* cannot be made use of to perform the functions of a writ of error or an appeal."

In the case of *In re Eckart*, 166 U. S., 481, it ap-

peared that the petitioner was convicted for the crime of murder, and that the ground relied upon to establish that the imprisonment under the judgment was unlawful was, because under the laws of Wisconsin, murder is divided into three degrees, the punishment varying according to the degree, and that, as the verdict in question failed to specify the degree of murder of which the accused was found guilty, the trial Court was without jurisdiction to pass sentence and judgment upon the accused, and the deprivation of liberty under such judgment was without due process of law. It also appeared that the petitioner had applied for a writ of *habeas corpus* to the Supreme Court of Wisconsin, asserting in his petition the same grounds relied upon in this Court. It also appeared that the Supreme Court of Wisconsin had held that under the statutes of that State, the jury must find the degree in their verdict in order that the Court might impose proper punishment.

This Court, speaking through Mr. Justice WHITE, held as follows:

> "In its decision refusing the writ applied for by Eckart, the Supreme Court of Wisconsin held that while the conviction under the sentence in question was erroneous, the error in passing sen-

etnce was not a jurisdictional defect, and the judgment was, therefore, not void. In this view we concur. The Court had jurisdiction of the offense charged and of the person of the accused. The verdict clearly did not acquit him of the crime with which he was charged, but found that he had committed an offense embraced within the accusation upon which he was tried. It was within the jurisdiction of the trial judge to pass upon the sufficiency of the verdict, and to construe its legal meaning, and if, in so doing, he erred and held the verdict to be sufficiently certain to authorize the imposition of punishment for the highest grade of the offense charged, it was error committed in the exercise of jurisdiction, and one which does not present a jurisdictional defect remediable by a writ of *habeas corpus.*"

And this Court in the same case also held:

"The case presented by the record is not within any of the exceptions to the general rule, that when a Court has jurisdiction by law of the offense charged, and of the party who is so charged its judgments are not nullities which can be collaterally attacked. The writ of *habeas corpus* cannot be made to perform the functions of a writ of error."

The relator, in the case at bar, applied for a writ of

habeas corpus to the Supreme Court of Illinois, and that Court in denying said writ, held:

> "It is not claimed that a person whose hearing is defective may commit murder of whom he chooses and may not be tried or punished for the offense. If there were any error in the matter it would only be ground for a writ of error and review by the Court, and an order for a new trial where he might be furnished with an ear trumpet, or in some way made to hear what the witnesses said, but, in the opinion of the Court, the ground set forth is no cause for a reversal of the judgment."

This Court, in the case of *Markuson* v. *Boucher*, 175 U. S., 184, in an opinion rendered by Mr. Justice McKenna, held as follows:

> "In the brief of appellant's counsel, and also in that of the Attorney General of the State, as well as in oral argument, the constitutional points raised were argued at length. We are not disposed to consider them. We have frequently pronounced against the review by *habeas corpus* of the judgments of the State Courts in criminal cases because some right under the Constitution of the United States was alleged to have been denied the person convicted, and have repeatedly decided that the remedy was by writ of error."

And in the last case cited, this Court cites with approval the case of *Baker* v. *Grice,* 169 U. S., 284, in which it was stated:

> "Instead of discharging they (the Federal Courts) will leave the prisoner to be dealt with by the Courts of the State; that after a final determination of the case by the State Court, the Federal Courts will even then generally leave the petitioner to his remedy by writ of error from this Court. The reason for this course is apparent. It is an exceedingly delicate jurisdiction given to the Federal Courts by which a person under an indictment in the State Court, and subject to its laws, may, by the decision of a single judge of the Federal Court, upon a writ of *habeas corpus* be taken out of the custody of the officers of the State and finally discharged therefrom, and thus a trial by the State Courts of an indictment found under the laws of a State be finally prevented."

This Court, in the case of the *United States* v. *Pridgeon,* 153 U. S., 48, held that there is no law or justice in giving to a prisoner relief under *habeas corpus* that is equivalent to an acquittal when on writ of error he could only have secured relief from that portion of the sentence which was void.

In the case of *Ex parte Terry,* 128 U. S., 289, this Court held that a writ of *habeas corpus* can deal only

with such defects in the proceedings as render them not simply erroneous, or irregular, but absolutely void.

In the case of *Ex parte Bigelow*, 113 U. S., 328, the petitioner sought release by writ of *habeas corpus* on the ground that he was twice put in jeopardy for the same offense, and this Court, in the opinion rendered by Mr. Justice MILLER, makes the following comments and holding:

> "This Article V of the amendments, and Articles VI and VII, contain other provisions concerning trials in the Courts of the United States designed as safe guards to the rights of parties. Do all of these go to the jurisdiction of the Courts? And are all judgments void where they have been disregarded in the progress of the trial? Is a judgment of conviction void when a deposition has been read against a person on trial for crime because he was not confronted with the witness, or because the indictment did not inform him with sufficient clearness of the nature and cause of the accusation?
>
> It may be confessed that it is not always very easy to determine what matters go to the jurisdiction of a Court so as to make its action, when erroneous, a nullity. But the general rule is that when the Court has jurisdiction by law of the offense charged, and of the party who is so charged its judgments are not nullities."

This Court, in one of its latest decisions, in the case of *Reid* v. *Jones*, 187 U. S., 153, through Mr. Justice HARLAN, held as follows:

> "The merits of this case have been fully considered in case No. 269, *Reid* v. *Colorado*, ante 137. But if this had not been we should dismiss the present appeal; for, one convicted in a State Court for an alleged violation of the criminal statutes of the State, and who contends that he is held in violation of the Constitution of the United States, must ordinarily first take his case to the highest Court of the State in which the judgment could be reviewed, and thence bring it, if unsuccessful there, to this Court by writ of error; that only in exceptional cases, of which the present is not one, will a Circuit Court of the United States, or this Court, upon an appeal from a Circuit Court, intervene by writ of *habeas corpus* in advance of the final action by the highest Court of the State."

The entire line of cases in this Court are in harmony with those above referred to, and no good purpose could be served by commenting upon each particular case. If the relator had any such constitutional right upon his trial, as now claimed by him, the failure of the trial Court to accord him such right would be but an error, or irregularity, in the proceedings in the progress of his trial, and one which could

have been corrected upon a writ of error from the Supreme Court of Illinois; and in case it was not corrected there, by a writ of error from this Court to the Supreme Court of Illinois. In any event, all the relief the relator could have obtained, even upon a writ of error, would have been a retrial of his case. The trial Court had jurisdiction of the crime and of his person, and under no circumstances could he have been discharged and set free except by a verdict of a jury finding him not guilty.

The case of *Hopt* v. *Utah,* 110 U. S., 574, cited by counsel for appellant, is not at variance with any of the principles announced in the cases referred to above. That case was a *writ of error* prosecuted from the Supreme Court of the United States to review the judgment of the Supreme Court of the Territory of Utah. It was not a case involving the right to a writ of *habeas corpus,* and this Court held that for various reasons the judgment of the Supreme Court of Utah was erroneous, and this case supports the contention of appellee that even upon a writ of error from the Supreme Court of the United States to the Supreme Court of Illinois, all this Court would have done in any event would be to reverse the judgment of the Supreme Court of Illinois and order a new trial. This

Court stated in the *Hopt* case, on page 583, as follows:

> "For the reasons stated, the judgment of the Supreme Court of the Territory must be reversed and the case remanded, with directions that the verdict and judgment be set aside and a new trial ordered."

In the case of *Hans. Nielsen, Petitioner,* 131 U. S., 176, cited by counsel for appellant, it appeared from *the record* that the Court had *no jurisdiction to render the judgment,* and therefore the writ of *habeas corpus* would lie. This Court, in the *Nielsen* case, *supra,* stated the rule as follows:

> "The objection to the remedy of *habeas corpus,* of course, would be that there was in force a regular judgment of conviction, which could not be questioned collaterally, as it would have to be on *habeas corpus.* But there are exceptions to this rule, which have more than once been acted upon by this Court. It is firmly established that if the Court which renders a judgment *has not jurisdiction to render it,* either because the proceedings or the law under which they are taken are unconstitutional, or for any other reason, the judgment is void and may be questioned collaterally, and a defendant who is imprisoned under and by virtue of it may be discharged from custody on *habeas corpus.* * * * * * It is

true that in the case of Snow we laid emphasis on the fact that the double conviction for the same offense appeared on the face of the judgment; but if it appears in the indictment or anywhere else in the record (of which the judgment is only a part) it is sufficient. In the present case *it appeared on the record* in the plea of *autre fois convict*, which was admitted to be true by the demurrer of the government. We think that this was sufficient."

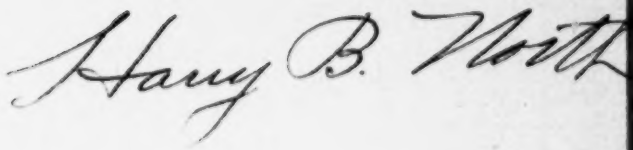
There is nothing in the *Nielsen* case, *supra*, which is not in harmony with all the other cases on the question involved. Of course, if the Court was absolutely without jurisdiction to render a judgment of conviction, then the writ of *habeas corpus* is a proper remedy, as the judgment in such a case would be absolutely void, but where the trial Court had jurisdiction of the subject matter and of the person, and an error or irregularity is committed in the trial, the judgment entered by the Court in such a case is not void, but is a good and valid judgment until reversed by the proper appellate tribunal.

The other cases cited by appellant have no application to the question at issue in the case at bar, as the right to a writ of *habeas corpus* was not at issue in any of them.

The crime committed in this case was an atrocious one, and the punishment fully deserved, and we respectfully submit that the judgment of the Circuit Court should be affirmed.

WILLIAM H. STEAD,
Attorney General of Illinois,

EDGAR ELDREDGE,
Asst. Attorney General.



IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1905.

533.

PEOPLE OF THE STATE OF ILLINOIS EX REL. GEORGE W. FELTS, APPELLANTS,

vs.

E. J. MURPHY, WARDEN OF THE STATE PENITENTIARY AT JOLIET, ILLINOIS, APPELLEE.

Appeal from the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

Additional Brief and Argument for Appellee.

Habeas corpus is not a proper writ to correct errors or irregularities, even though a constitutional right is involved, if the court had jurisdiction to try the case.

Ex parte Harding, 120 U. S., 782.
Kohl vs Lehlback, 160 U. S., 293.
Church on Habeas Corpus, 2d ed., sec. 364, and cases cited.

Law in its regular course of administration through courts of justice is due process, and when secured by the

law of the State the constitutional requirement is satisfied. Due process is secured by laws operating on all alike.

Maxwell vs. Dow, 176 U. S., 581.
Bergemann vs. Backer, 157 U. S., 655.

Provision has been made by statute in Illinois to try the question of mental capacity of one charged with crime.

Chap. 38, Hurd's Statute of Ill. (1897 ed.), par. 282, 284, 285, and 286.

The case of State vs. William Harris, 53 N. C., 136, and cases cited therein, all cited by relator, determined the practice obtained by common law to try the question of the mental condition of one charged with crime, and if insane or of insufficient intellect to *comprehend the course of the proceedings* on the trial, such person could not be found guilty of crime, but was held and dealt with as an insane person. They go no further. In the case at bar no such case is presented. There is no claim that relator was mentally incapable of being tried, but that his hearing was impaired only. But if it be conceded for argument that the trial court should have provided means of interpreting to relator questions to and answers from jurors and witnesses on the trial, such omission at best would have been but error or irregularity, which could be corrected by writ of error and not by writ of habeas corpus.

HARRY B. NORTH,
State Attorney in and for Winnebago County and State of Illinois.

Supreme Court of the United States.

No. 533.—October Term, 1905.

George W. Felts, Appellant,
vs.
E. J. Murphy, Warden of the Illinois State Penitentiary at Joliet.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

[March 12, 1906.]

The appellant was indicted in the Circuit Court of Winnebago County, in the State of Illinois, for the crime of murder. He was tried at the January term of that court, held in 1905, found guilty, and sentenced to the penitentiary for his natural life. He made an application to the Circuit Court of Cook County for a writ of *habeas corpus*, after judgment upon the verdict had been entered, and that court denied the writ. He then made a like application to the Supreme Court of the State of Illinois, which was denied. The appellant says that he was unable to obtain a writ of error in the State court, because, as he avers, it would cost between $700 and $800 to print the record, and that he was absolutely penniless, except that he had a pension of some $24 a month. Hence he was unable to obtain any relief in the State courts.

Subsequently the appellant applied by written petition to the United States Circuit Court for the Northern District of Illinois, Eastern Division, for the same writ, to be directed to the warden of the Illinois State Penitentiary, where the petitioner was confined under the judgment entered upon the verdict of guilty upon the trial of the indictment. The appellant alleged in his petition the foregoing facts, and also, among other things, that he was not guilty of the crime of which he was indicted and had been convicted. He further stated and described the circumstances in which the killing was done, and said that he had been set upon on a dark night by some one unknown to him, who came upon him from behind and grasped him by the neck and almost broke it as he ran him about in the dark; that his neck was very badly hurt in the struggle and marks were left upon it visible for days thereafter. In the struggle the person was killed and the petitioner was subsequently convicted of his murder. The petitioner is a veteran of the Civil War and lost his hearing in the line of his duty as a soldier, and is now between 60 and 70 years of age. He is so deaf that he can only hear when a person speaks into the mouthpiece of his ear trumpet close to his ear.

He alleged in his petition that upon the trial of the case he did not hear one single word of the examination of the jurors, either by the State's attorney or by his own counsel; that he did not hear the names of the jurors nor their business, and could not confer intelligently with his counsel as to the advisability of acceptance or rejection of a juror, and, as a matter of fact, he was not consulted and did not know the facts elicited by the examination of the jurors before acceptance; that if he had known the facts as they occurred he would have counselled the rejection of certain jurors on account of their relationship to other people; that he did not hear or have communicated to him, in any way, the evidence of the witnesses on the trial of his case, and that he was unable to suggest to his counsel any questions for their examination or cross-examination during the trial, and that the substance of their evidence was not communicated to him, and he did not know what it was until he saw some partial reports of it in the newspapers, when it was too late to suggest to his counsel proper cross-questions; that the first thing communicated to him after the beginning of the trial, which lasted about two weeks, was the verdict; he was in the court room, with his ear trumpet, but was unable to hear the verdict, and did not know what the verdict was until the clerk of the court wrote it upon a piece of paper and gave it to him.

He was present in the court room during the motion for a new trial, but did not hear a word that was said by either counsel, and the only thing communicated to him was when he was called to the bar to be sentenced.

The record shows that after the motion for a new trial had been made, the court said, "on reviewing the entire case I am disposed to say that the motion for a new trial be overruled." Continuing, the court said:

"It is regretted in one sense that the defendant, on account of his infirmity, is unable to know clearly what has been done. He should be informed, I suppose, of the fact that his motion for a new trial has been overruled. Mr. Sheriff, will you bring Mr. Felts forward? I wish you would say to Mr. Felts that his motion for a new trial has been overruled.

"The SHERIFF: The court wishes me to tell you that motion for a new trial is overruled. Do you understand?

"FELTS: I understand; yes.

"The COURT: You may ask him if he has anything to say why sentence of the court should not now be pronounced.

"The SHERIFF: Have you anything to say why sentence of the court should not now be pronounced?

"FELTS: False swearing is all I got to say.

"COURT: Well, under the circumstances of course it is practically impossible for me to say anything to this defendant.

"(Here follows the sentence of the court), which sentence was transmitted to the defendant by the sheriff through a tube."

The record shows that the appellant was himself examined as a witness on his trial and had the benefit of counsel, who appeared for and defended him upon such trial.

He contended before the Federal Circuit Court, on his application for the writ of *habeas corpus*, that, on account of the manner in which he was tried, his constitutional rights had been denied him, and that his conviction was without due process of law within the meaning of the Fourteenth Amendment to the Constitution of the United States, and that he was entitled, therefore, to be discharged from imprisonment under the judgment. He also urged that the same was void, as being rendered without jurisdiction on account of the violation of his constitutional rights. The Circuit Court denied the application for the writ, and from the order denying the same the appellant has appealed to this court.

Mr. Justice PECKHAM, after making the foregoing statement, delivered the opinion of the Court.

The uncontradicted facts are that this unfortunate man has been convicted of the crime of murder and sentenced to imprisonment for life, although he did not hear a word of the evidence that was given upon his trial, because of his almost total deafness, his inability to hear being such that it required a person to speak through his ear trumpet, close to his ear, in order that such person should be heard by him.

Counsel for the appellant has cited in his brief cases regarding the mode of procedure which has been sometimes adopted where, from the condition of mind of the individual to be tried, it was doubtful if he were able to understand or comprehend the proceedings of the trial, and it may well be that such a method might properly have been adopted in this case. But upon this writ the question for our determination is simply one of jurisdiction. If that were not lacking at the time of the trial and if it continued all through, then the application for the writ was properly denied by the Circuit Court, and its order must be affirmed. The writ cannot perform the function of a writ of error. (*Ex parte Bigelow*, 113 U. S. 328; *In re Lennon*, 166 U. S. 548, 552; *In re Eckart*, 166 U. S. 481.)

In this case the State court had jurisdiction both of the subject matter and of the person upon the trial of the accused, and such jurisdiction was not lost during his trial but continued to its end, and it had jurisdiction to direct the judgment which was entered and to have the same executed. If there were any irregularities in the trial of the appellant, because of the failure of the court to see to it that the testimony in the case was repeated to him through the ear trumpet which he had with him, it was at most an error, which did not take away from the court its jurisdiction over the subject matter and over the person of the accused. The appellant was not deprived of his liberty without due process of law by the manner in which he was tried, so as to violate the provisions of the Fourteenth Amendment to the Federal Constitution. That amendment, it has been said by this

court, "did not radically change the whole theory of the relations of the State and Federal Governments to each other and of both governments to the people." (*In re Kemmler*, 136 U. S. 436, 448; *Brown* v. *New Jersey*, 175 U. S. 172, 175.)

We are unable to see how jurisdiction was lost in this case by the manner of trial. The accused was *compos mentis*. No claim to the contrary is made. He knew he was being tried, on account of the killing of the deceased. He had counsel and understood the fact that he was on trial on the indictment mentioned, but he did not hear the evidence. He made no objection, asked for nothing, and permitted his counsel to take his own course. We see no loss of jurisdiction in all this and no absence of due process of law. It is to be regretted that the testimony was not read or repeated to him. But that omission did not affect the jurisdiction of the court.

Upon the point that the failure to have repeated to the appellant the testimony given on the trial caused the court to lose jurisdiction, the case of *Nielson, Petitioner*, (131 U. S. 176,) is cited by appellant. We think it plain that the case does not substantiate the contention. The sentence imposed in that case was held by this court to have been beyond the jurisdiction of the trial court to pronounce, because it was against the express provisions of the Constitution, which bounds and limits all jurisdiction; but we are entirely clear that in this case the trial was so conducted that there was not at any time any lack of jurisdiction in the court, and that the most that can be urged is that there might have been an error committed by the trial court in omitting to have the evidence repeated to the appellant as it was given by the witnesses at the trial, even though no demand of the kind was made by petitioner or his counsel.

Although the conviction and punishment of the appellant under the facts appearing on this record may seem to be somewhat hard, yet this court has no jurisdiction to grant the relief asked for.

The order of the Circuit Court refusing the writ was right, and is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.